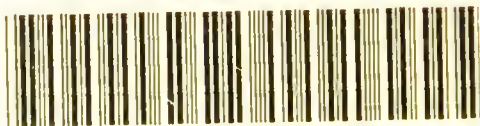


**GUIDE  
TO THE  
PUBLIC HEALTH ACTS  
AND  
LOCAL GOVERNMENT ACTS.**



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A GUIDE TO THE PUBLIC HEALTH ACTS  
AND LOCAL GOVERNMENT ACTS.



A GUIDE  
TO THE  
PUBLIC HEALTH ACTS, 1875 & 1890,  
AND THE  
LOCAL GOVERNMENT ACTS, 1888 & 1894,  
WITH THE INCORPORATED ACTS  
RELATING TO  
**URBAN AND RURAL DISTRICT COUNCILS**  
TOGETHER WITH THE  
PRIVATE STREET WORKS ACT, 1892.

BY  
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(COUNSEL TO THE ASSOCIATIONS OF DISTRICT COUNCILS)

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## PREFACE.

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FACILITIES for acquiring a useful knowledge of the laws regulating Local Government are small. The text-books are cumbersome and costly editions of all the Acts relating to Public Health and Local Government, three-fourths of which are never referred to. This Guide has been prepared to bring within reach of the public those parts of the Acts which they are daily called upon to obey.

The plan of the book is to print the text of the section of the Act which relates to the matter discussed, and illustrate its application by the decisions of the Courts, and the experience which the work of the Urban and Rural District Councils Associations has, during the past ten years, afforded the Author.

Those Associations include some 700 local authorities, who daily submit their difficulties for the opinion of the Secretaries and Standing Counsel to the Associations.

The execution of powers relating to streets, drainage, and water supply constantly present difficulties, and these are exhaustively treated. So are questions relating to rates and assessments, and the practice of Elections, and the disqualification of Councillors.

Chapters are devoted to questions arising about burials and infectious diseases, dairies, and the adulteration of food, which are now, more than ever, engaging the attention of District Councils and their officers. A detailed account is given of defaults, penalties, and offences, and of legal proceedings to enforce both the Public Health Acts and Highway Acts.

The utility of the book is obvious. Experience vouches for its accuracy, Messrs. Eyre and Spottiswoode, the King's Printers, have undertaken to publish it at a popular price, and the Author has confidence that thousands of sensible District Councillors and ratepayers will purchase it and profit thereby.

L. G.

The Inner Temple.

## CHAPTER 1.

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### DISTRICT COUNCILS.

#### *The Style—The Body Corporate—Statutory Powers.*

THE Public Health Act, 1848, conferred on the Local Authority the style of Local Board of Health ; the Local Government Act, 1858, curtailed the style to the Local Board<sup>1</sup> ; the Public Health Act, 1875, adopted the style of Urban Sanitary Authority, and the Local Government Act, 1894, changed this to “ Urban District Council ” to be designated by such name as may with the sanction of the Local Government Board be adopted (section 7, Public Health Act, 1875). The Urban District Council are a body corporate with a perpetual succession and a common seal, with power to sue and be sued in their corporate name, and to hold lands without any licence in mortmain for the purposes of the Public Health Acts. Section 55, Local Government Act, 1894, provides that :—

“(3.) Any District Council<sup>2</sup> may, with the sanction of the County Council, change their name and the name of their district.

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<sup>1</sup> Local Boards were corporate bodies formed for the more effectual supply of water to towns and places, and the sewerage, drainage, cleansing, and paving thereof.

<sup>2</sup> The expression “ District Council ” includes Urban and Rural District Councils.

“(4.) Every change of name shall be published in such manner as the authority authorising the change may direct, and shall be notified to the Local Government Board.”<sup>1</sup>

The Rural District Council was created by the Local Government Act, 1894. The Rural Sanitary District, which occupied the area of a poor law union exclusive of such parts of it as were within an Urban District, was till 1895 controlled by the Guardians of the Union.

Section 21 of the Local Government Act, 1894, provides that:—

“(2.) For every Rural Sanitary District there shall be a Rural District Council whose district shall be called a Rural District.”

And by section 24 (7):—

“Every District Council for a Rural District shall be a body corporate by the name of the District Council with the addition of the name of the district or if there is any doubt as to the latter name, of such name as the County Council direct, and shall have perpetual succession and a common seal, and may hold land for the purposes of their powers and duties without licence in mortmain.”

The incorporation of District Councils confers on those bodies the power to act as persons while duly assembled for statutory purposes. The several members of a corporate body are not invested with authority to enforce statutory powers, the corporate body act at their meetings for the transaction of business under the Public Health Acts. When “the meeting”

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<sup>1</sup> This superseded section 311, Public Health Act, 1875. The District Council should pass a precise resolution reciting the necessity for the change and send a copy to the County Council. Publication in the “London Gazette” and local newspapers is usually required. By the Stock Transfer Act, 1895, stock may be entered in the new name.

adjourns the authority of each member is in abeyance till the Council assembles. District Councils are invested with such powers as are in the Public Health Act, 1875, and the amending Acts, mentioned.

This restriction of the function of the corporate body should be noted. They have such powers as are specified, they derive no powers from the common law like boroughs.<sup>1</sup> What they can do will be found mentioned in some Act of Parliament. If the power is not there specified the Council cannot act; and if the power is in its mode of exercise restricted, it can only be exercised subject to the restrictions stated; but where a power is conferred all acts necessarily incidental in order to make it effectually operative are conferred, *e.g.*, the rights of councils as owners of property can be asserted just in the same way as individuals, and their statutory powers must be exercised with due care in regard to the rights of others. They have the advantage of acting as individuals, and are subject to like liabilities.

#### FORMATION OF DISTRICTS.

*By the L.C. Board—By the County Council—Resolution of Owners and Ratepayers—Local Inquiries.*

A “district” is the area under the management of a District Council established for purposes of local government. The “formation” of new Urban Dis-

<sup>1</sup> Acts done in excess of statutory powers operate as revocable licenses. *St. Mary, Islington, and Hornsey U.D.C.*, 1900, 1 Ch. 695.

tricts and the alteration of Urban and Rural Districts may be ordered by the authority of the Local Government Board, or by that of a County Council pursuant to section 57, Local Government Act, 1888. The latter procedure tends in practice to supersede the former, but the powers conferred on the Local Government Board by sections 271–274, Public Health Act, 1875, can still be exercised. The Local Government Board can by a Provisional Order form a Local Government District, and such order requires confirmation by Parliament (section 297, P.H. Act, 1875), but the Board can also form a district in pursuance of a resolution of owners and ratepayers passed in manner directed by Schedule III. of the Public Health Act, 1875. That Schedule involves the application of the rules contained in Schedule II. of the Act which is repealed by the Local Government Act, 1894. This makes it difficult to put section 272, Public Health Act, 1875, into practice, but where it is not desired to appeal to the County Council the powers of the Local Government Board will be found useful.

Section 272, as modified by the Local Government Act, 1894, is as follows :—

“The owners and ratepayers of any place situate in any Rural District or Districts, and having a known and defined boundary, may, by a resolution passed in manner provided by Schedule III. to this Act, declare that it is expedient that such place should be constituted a Local Government District ; and the Local Government Board may, if it thinks fit, by order made not less than six weeks after the receipt of a copy of such resolution by the said Board, declare such place to be a Local Government District, and from and after the com-



mencement of such order such place shall become a Local Government District, and be subject to the jurisdiction of a District Council.

"A petition<sup>1</sup> may be presented to the Local Government Board from any place so situated as aforesaid, and not having a known and defined boundary, to settle its boundary for the purposes of this Act; the petition shall state the proposed boundaries of the place, shall be signed by one-tenth of the persons rated to the relief of the poor and resident within such boundaries, and shall be supported by such evidence as the Local Government Board may require. The Local Government Board may, after local inquiry as to the genuineness of the petition, and as to the propriety of the proposed boundaries, either dismiss the petition altogether or make order as to the boundaries of the place, and may also make order as to the costs of the proceedings in relation thereto and the persons by whom such costs are to be borne.

"Any place the boundaries of which have been settled in pursuance of the foregoing provisions shall thenceforth, for the purposes of this Act, be deemed to be a place with a known and defined boundary."

What is to be recognised as a place with a known and defined boundary is not stated. It seems sufficient if an actual boundary of some area is ascertained so that the limits within which the Act is to be put in force can be indicated with certainty. The resolution to form a Local Government District should purport to proceed from the owners and ratepayers of the whole of the area to which it relates.<sup>2</sup> The formation or alteration of a Local Government District does not affect parliamentary divisions or the exercise of the parliamentary franchise.<sup>3</sup>

<sup>1</sup> The petition should be written on foolscap paper addressed to the President of the Local Government Board under cover to the Secretary. The names of the petitioners should be written at the end of the petition.

<sup>2</sup> *Smith v. Todmorden*, 1861, L.B., 1 B. & S. 412.

<sup>3</sup> *Jones v. Reeve*, 1884, 1 T.L.R. 178.

A counter petition may be lodged by one-twentieth of the owners and ratepayers of the whole of the proposed district.

By section 273—

“Where not less than one-twentieth of the owners and ratepayers of any place (such twentieth to be one-twentieth in number of the owners and ratepayers of the place taken together, or the owners and ratepayers in respect of one-twentieth of the rateable property in the place, in which a resolution has been passed declaring that it is expedient that such place should be constituted a Local Government District, are desirous that such district should not be constituted, or that any part of such place should be excluded therefrom, they may present a petition to the Local Government Board objecting to such resolution, and specifying the ground of their objection.

“Such petition shall be subscribed by the owners and ratepayers presenting the same, and shall be presented within six weeks from the date of the passing of the resolution objected to, and shall where the exclusion of part of the place is prayed for, state the part of the place proposed to be excluded, accompanied with an explanatory plan.

“The Local Government Board may after local inquiry make order with respect to the matter in question, and such order shall be binding on the place in respect of which it is made.”

A local inquiry is directed to be held by the Local Government Board when they see fit, and they may make orders as to the costs of inquiries and as to the parties by whom or the rates out of which they shall be borne. An inquiry is conducted by an Inspector of the Board who is invested with such powers as poor law inspectors have under the Acts relating to the relief of the poor for the purpose of the inquiry

directed by the Board (Public Health Act, 1875, s. 293-96).

The following are the provisions of 10 & 11 Vict. c. 109, s. 21, the Poor Law Board Act, 1847, with respect to the process of poor law inspectors—

“The said inspectors may summon before them such persons as they may think necessary for the purpose of being examined before them upon any matter concerning the inquiry or for the purpose of producing and verifying upon oath any books, contracts, agreements, accounts, writings, or copies of the same in anywise relating to such matter, and may examine any person whom they shall so summon or who shall voluntarily come before them to be examined. All summonses made by any such inspector for any such purpose shall be obeyed by all persons as if such summons had been the summons and order of the Local Government Board, and the non-observance thereof shall be punishable in like manner; and the costs and expenses of such person so summoned shall be paid in such cases and in such manner as the costs and expenses of persons summoned under the Poor Law Acts are now payable; provided always, that no person shall be required in obedience to any such summons to go or travel more than 10 miles from his place of abode.”

Since the Local Government Act, 1888, came into force, the alteration of the boundaries of Urban and Rural Districts and Parishes, and Wards, and the formation of Urban Districts, is done under powers conferred on the County Council by section 57 of that Act :—

“Section 57.—(1.) Whenever a County Council is satisfied that a *prima facie* case is made out as respects any County District<sup>1</sup> not a Borough, or as respects any parish, for a

<sup>1</sup> County District means any district, Urban or Rural, under the management of a District Council. L.G. Act, 1888, s. 100.

Where an Urban District is situate in two counties it is deemed to lie within the county which contains the larger part of the population of the district according to the last census. L.G. Act, 1888, s. 50 (1 (6)).

proposal for all or any of the following things; that is to say—

“(a) the alteration or definition of the boundary thereof :

“(b) the division thereof, or the union thereof, with any other such district or districts, parish or parishes, or the transfer of part of a parish to another parish ;

“(c) the conversion of any such district, or part thereof, if it is a Rural District, into an Urban District, and if it is an Urban District, into a Rural District, or the transfer of the whole or any part of any such district from one district to another, and the formation of new Urban or Rural Districts ;

“(d) the division of an Urban District into wards ; and

“(e) the alteration of the number of wards, or of the boundaries of any ward, or of the number of members of any District Council, or of the apportionment of such members among the wards,

the County Council may cause such inquiry to be made in the locality, and such notice to be given, both in the locality and to the Local Government Board, Board of Education, or other Government Department as may be prescribed, and such other inquiry and notices (if any), as they think fit, and if satisfied that such proposal is desirable, may make an order for the same accordingly.

“(2.) Notice of the provisions of the order shall be given, and copies thereof shall be supplied in the prescribed manner, and otherwise as the County Council think fit, and if it relates to the division of a district into wards, or the alteration of the number of wards, or of the boundaries of a ward, or of the number of the members of a District Council, or of the apportionment of the members among the wards, shall come into operation upon being finally approved by the County Council.

“(3.) In any other case the order shall be submitted to the Local Government Board ; and if within six weeks<sup>1</sup> after such notice of the provisions of the order as the Local Government Board determine to be the first notice, the

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<sup>1</sup> L.G.A., 1894, s. 41.

Council of any district affected by the order, or any number of county electors registered in that district, or in any ward of that district, not being less than one-sixth of the total number of electors in that district or ward, or if the order relates only to a parish, any number of county electors registered in that parish, not being less than one-sixth of the total number of electors in that parish, petition the Local Government Board to disallow the order, the Local Government Board shall cause to be made a local inquiry, and determine whether the order is to be confirmed or not.

“(4.) If any such petition is not presented, or being presented is withdrawn, the Local Government Board shall confirm the order.

“(5.) The Local Government Board, on confirming an order, may make such modifications therein as they consider necessary, for carrying into effect the objects of the order.

“(6.) An order under this section, when confirmed by the Local Government Board, shall be forthwith laid upon the table of both Houses of Parliament, if Parliament be then sitting, and, if not, forthwith after the then next meeting of Parliament.

“(7.) This section shall be in addition to, and not in derogation of, any power of the Local Government Board in respect of the union or division or alteration of parishes.”

A local inquiry, pursuant to the Local Government Act, 1888, by the Local Government Board, in relation to matters which are not determined by arbitration is held pursuant to section 87, which makes the provisions of sections 293 to 296 Public Health Act, 1875, applicable thereto. The costs, including the inspector's salary, not exceeding three guineas a day, are to be paid by the Councils in such proportions as the Board may direct, and the amount of costs fixed by the Board is a debt to the Crown from such Councils.

## ELECTIONS.

*The Returning Officer—Nominations—The Election Rules—Misnomers.*

The twenty-third section of the Local Government Act, 1894, enacts that the election of Councillors shall be conducted according to rules framed pursuant to the Act by the Local Government Board. The District Councils Election Orders of 1st January, 1898, contain all the rules for the conduct of an election. What is there directed to be done must be done and nothing else. This makes the work of the Returning Officer easy. If nomination papers are correct in form, and duly sent to the Returning Officer's Office, the person nominated is a candidate, though he may be disqualified both for nomination and election. It is not the business of the Returning Officer to entertain any objection to the qualification of a candidate.<sup>1</sup> A disqualified person may be unseated on petition, and is subject to penalties for acting in the office to which he is elected. That is his risk. In *Harford v. Linskey*,<sup>2</sup> the Returning Officer rejected a nomination on the ground that the person nominated was interested in contracts with the Council. The High Court held that to be wrong. From the time that a person is duly nominated he is a candidate, and if elected his competence for office can only be determined by statutory methods.

<sup>1</sup> *Pritchard v. M. of Bangor*, 1888, 13 A.C. 211.

<sup>2</sup> 1899, 1 Q.B., 852.



To every election regulated by such Rules the Municipal Electors (Corrupt and Illegal Practices) Act, 1884, and sections 74 and 75, and Part IV. of the Municipal Corporations Act, 1882, as amended by the last-mentioned Act, shall, subject to adaptations, alterations, and exceptions made by such rules apply in like manner as in the case of a municipal election ; and the provisions of the Municipal Corporations Act, 1882, and amending Acts, with respect to the expenses of elections of councillors of a borough, and to the acceptance of office, resignation, re-eligibility of holders of office, and the filling of casual vacancies, and section 56 of that Act shall, subject to the adaptations, alterations, and exceptions made by the said rules apply in the case of District Councillors of Urban and Rural Districts.

Provided that —

“Nothing in the enactments applied by section 48 shall authorise or require a Returning Officer to hold an election to fill a casual vacancy which occurs within six months before the ordinary day of retirement from the office in which the vacancy occurs, and the vacancy shall be filled at the next ordinary election ”

Pursuant to the power conferred on the Local Government Board they have framed and published the Election Orders of 1898 relating to the election of Urban and Rural District Councillors, directing that the rules therein contained shall apply to and shall be observed in all such elections.

It is clear that all proceedings relating to the election of District Councillors will be controlled by the rules contained in those Orders.

The Returning Officer is either the Clerk to the Urban District Council or the Clerk to the Guardians or other person who acts as Clerk to the Rural District Council for the purposes of the Public Health Act, 1875. His function is ministerial. He has to see that the rules are complied with; that nomination papers are correctly filled up. If a disqualification exists at the time of nomination for election it disqualifies for nomination and for election.<sup>1</sup> A petition may be presented by a person who alleges himself to have been a candidate,<sup>2</sup> but not in respect of a nomination paper which the Returning Officer has decided to be validly filled up because his decision in regard to compliance with the election rules is final. If such a petition be presented it may be struck off the file by order of the High Court. Where a candidate's name was filled in the nomination paper, after the proposer and seconder had signed, and the Returning Officer had decided the nomination paper to be validly filled up, it was held that a petition could not be based on such an objection.<sup>3</sup>

By Rule 7 (3), if the Returning Officer shall decide that a nomination is invalid, he shall put a note on it to that effect, stating the grounds of his decision, and he shall sign such note. The Returning Officer's grounds must relate to non-compliance with the rules; and by Rule 32:—

“No misnomer or inaccurate description of any person or place named in any notice or nomination paper under this

<sup>1</sup> Gloucester M.E.P. *Ford v. Newth*, 1901, 1 K.B. 683.

<sup>2</sup> *Harford v. Linskey*, 1899, 1 Q.B. 853.

<sup>3</sup> *Cox v. Davies*, 1898, 14 T.L.R. 127.

Order shall hinder the full operation of such notice or paper with respect to that person or place, provided the description of that person or place is such as to be commonly understood."

If a form is filled up so as to identify the person nominated and the electors who nominate, there is no misnomer or inaccuracy sufficient to invalidate a nomination. The question is not as to the identity of name, but whether the candidate or elector whose name appears as A.B. in the nomination papers is the person described on the register and intended to be nominated or intending to nominate.

Where the name of a person who is not a candidate is printed on the ballot papers the election of the candidates elected by a majority of votes less than the number given to the non-candidate, is void, notwithstanding section 11, Ballot Act, 1872. In such a case the R.O. should be made a respondent, and the Court exercise their discretion about making an order for the payment of costs against the R.O. whose negligence has avoided the election.<sup>1</sup>

## REGISTRATION.

### *Parochial Electors—The Receipt of Alms-- Paupers on the Register.*

The parochial electors of the parishes in the district are the electors of the councillors of the district, and the Local Government register of electors and the parliamentary register of electors, so far as they relate to a parish, together form the register of

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<sup>1</sup> Wilson v. Ingham, 1895, 72 L.T. 796.

parochial electors of the parish, sections 23, 44, Local Government Act, 1894; hence the attention of public authorities and their officers will frequently be drawn to the various circumstances which operate as a disqualification for registration. There is none more common than the receipt of union or parochial relief and of "alms." Those who have been in receipt of poor-law relief are known, but all almsmen are not paupers, so it is not always easy to say what sort of alms do pauperise the recipient so as to disqualify him as a parochial elector. The subject of "alms" has its history. When the Reform Act of 1832 became law there was no fixed rule in regard to the receipt of alms which sufficed to disqualify from voting on the election of members to serve in Parliament, hence it has happened that section 36 of that Act which makes "the receipt of alms which by the law of Parliament now disqualify" the test of what is to disqualify for the exercise of the franchise has led to many conflicting decisions. The receipt of the benefits of a charity does not of itself disqualify; the position of the recipient is the guide which indicates whether, under the circumstances, he is in a condition of disqualifying indigence and dependence, which destroys the freedom of choice. The position of pensioners and inmates of public charitable institutions varies according to the scheme or intention of the founder which regulates the institution.

Inmates if in a necessitous condition before admission to a public charity become independent when

enjoying the benefit of its funds, hence a rule has become established that where almsmen have a legal interest in the charity property from which they receive their alms, they are not disqualified because they receive it as a matter of right and not as a gift which may be withdrawn at any time at the pleasure of the donors. *Smith v. Hall*,<sup>1</sup> decided in 1865, is a good illustration. The voters objected to were Brethren of St. John's Hospital at Sandwich, an old endowment with estates and houses occupied by the brethren. The income from the estates was divided among the brethren according to the scheme of the endowment, which was for the benefit of those who had no competent means to live. Chief Justice Earle in his judgment said, "We should always incline to favour the qualification unless the law compels us to decide against it. The meaning of the Legislature evidently was that persons so placed by their indigence as to be presumably subservient and destitute of all freedom of mind should not be permitted to exercise the franchise; and I think these brethren, by reason of their having a house and a share for life in the profits of the land belonging to the hospital, are invested with a far greater independence than those who have nothing to rely on but the precarious proceeds of their own labour."

This was followed in 1897 in *Cowen v. T.C. of Kingston-on-Hull*,<sup>2</sup> where the inmates of the

<sup>1</sup> 1863, 15 C.B. N.S. 485.

<sup>2</sup> 1897, 45 W.R. 413.

Charterhouse Hospital, founded for "the feeble and old so long as they are neecessitous," were held subject to no disqualification by reason of participation in the charity. Once elected they received their share as a right. The beneficeiares had a freehold interest in the endowment. Where an endowment is invested in trustees, who ehose almsmen because of their inability to maintain themselves, then their position destroys the freedom of their vote, and they are disqualified. In *Baker v. T.C. of Monmouth*,<sup>1</sup> the occupants of an almshouse were required to wear a badge, and this mark of poverty disqualified them.

Whether the receipt of funds of a paroehial charity suffices to indiate such a state of absolute indigenee and independence as to operate as a disqualification "by the law of Parliament," to be registered as a voter, depends upon the eircumstances of each case. "Alms" is not limited to eharities administered by parish offieers; it embraces all moneys distributed from the ineome of a private charitable trust given for the use of the poor inhabitants of a parish. In *Harrison v. Carter*<sup>2</sup> the receipt of 12s. 6d. by an agrieultural labourer was deemed, having regard to his position, to disqualify. That is hard. And it would make no difference whether the alms were received in kind. A distribution of flannel petticoats for the labourers' wives might disfranchise a rural parish.

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<sup>1</sup> 1885, 34 W.R. 64; 53 L.T. 668.

<sup>2</sup> 1876, 2 C.P.D. 26.



Where the votes of inmates of an institution are objected to they will not be disallowed unless the rules of the institution necessarily show that the inmates are in receipt of alms such as to disqualify.

In each case the objection should be made to the vote of each inmate whose independence is questioned.<sup>1</sup>

To sum up the position, the three elements necessary to constitute a disqualification by receipt of alms, not forming part of the fund levied in the ordinary way for the relief of the poor, are,—

- (1.) Poverty of the recipient ;
- (2.) The receipt of alms ;
- (3.) Absence of independence, which is essential to freedom of choice.

By L.G. Act, 1894, section 44, every person whose name is on the register of parochial electors is entitled to vote as a parochial elector unless prohibited from voting by some Act of Parliament ; and the parochial electors are the electors of the guardians of the parish. By section 24 (3) guardians as such are not to be elected for a parish in a rural district, but the district councillors for such a parish are to be the representatives of that parish on the board of guardians, and when acting in that capacity are to be deemed to be guardians of the poor.

Section 14 of the Poor Law Amendment Act, 1876, provides that —

“No person shall be entitled to vote in the election of a guardian or in the election to an office under the provisions

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<sup>1</sup> *Daniels v. Allard*, 1887, F. & S. Reg. Cases 71.

of any statute who shall be in receipt of relief given to himself or his wife or child, or who shall have been in receipt of such relief on any day during the year last preceeding such election. In the case of any person objected to on this ground a certificate from the clerk of the guardians under his hand shall be sufficient evidence of such person having received relief."

The election to the office of rural district councillor is an election to an office under the provisions of a statute, hence paupers on the register lose their right to vote. If their votes are tendered, the validity of an objection should be supported by the certificate of the clerk of the guardians.

### ELECTORS.

#### *The Presiding Officer—Polling Stations— Declaration of Secrecy—Test Questions.*

At each polling station the Returning Officer, or some person appointed by him, presides, and the person so presiding is called the Presiding Officer (E.O., 1898, 15). This election officer supervises the work done at the polling, and keeps order at the station.

By Rule 21, Sched. 3, E.O., 1898—

"The Presiding Officer appointed to preside at each station shall keep order at his station, shall regulate the number of electors to be admitted at a time, and shall exclude all other persons except the clerks and agents of the candidates and the constables on duty."

Any person who has attained the age of 21 years is eligible as Presiding Officer if he has not been

employed by any other person in or about the election. Before the opening of the poll he must make a statutory declaration of secrecy, in the presence if he is the Returning Officer, of a Justice of the Peace, and in any other case, of a Justice of the Peace or of the Returning Officer (R. 54). Section 4 of the Ballot Act, 1872, which enumerates the penalties attaching to infringement of secrecy must be read to the declarant by the person taking the declaration. The prescribed form is :—

“I solemnly promise and declare that I will not at this election for \_\_\_\_\_ do anything forbidden by section 4 of the Ballot Act, 1872, which has been read to me.”

If the Presiding Officer is an elector he may vote, but it is well to avoid appointing an elector to the office. It is, however, advantageous to appoint a person residing near the polling station to which he is assigned, for if compelled by necessity to leave the station the polling may be interrupted, and travelling expenses are not allowed. For breach of duty a Presiding Officer is liable to an action at suit of a party aggrieved,<sup>1</sup> and to a penalty of 100*l.* and full costs of suit for a wilful misconduct.

The Presiding Officer acts as Deputy Returning Officer for the purpose of adjournment of the poll, and he may delegate to the clerks appointed to assist him any act which he is required or authorised to do by the Ballot Act at a polling station except ordering

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<sup>1</sup> *Pickering v. James*, 1873, L.R. 8 Q.P. 489.

the arrest, exclusion, or ejection from the polling station of any person (R. 50).

The duties of a Presiding Officer are set out fully in the printed instructions to Presiding Officers and Poll Clerks. In respect of keeping order in the station, section 9, Ballot Act, 1872, provides :—

“If any person misconducts himself in the polling station or fails to obey the lawful orders of the Presiding Officer, he may immediately, by order of the Presiding Officer, be removed from the polling station by any constable in or near that station or any other person authorised in writing by the Registration Officer to remove him; and the person so removed shall not, unless with the permission of the Presiding Officer, again be allowed to enter the polling station during the day.”

The Presiding Officer should allot seats for the polling agents of candidates, and see that they keep in them.

The register is conclusive on the Returning Officer. He may know that a name ought not to be on the register or that it is incorrect, yet if he is satisfied of the identity of the elector applying to vote with the person whose name appears on the register he cannot refuse to deliver a ballot paper to him unless the person is disqualified for voting by some Act of Parliament; but he should refuse a ballot paper to electors who have become too infirm to understand at the time of voting what is the meaning of their acts. Of the mental capacity of a drunkard or infirm person the Presiding Officer is the judge. In doubtful cases the statutory questions may be used to test the sobriety or sanity of the voter.

By Rule 18, R.D.C.E.O., 1898 :—

“The Presiding Officer may, and if required by any parochial elector of the district, or any polling agent appointed under Rule 18, shall, put to any elector at the time of his applying for a ballot paper, but not afterwards, the following questions, or one of them, and no other :—

“(a.) Are you the person entered in the parochial register for the parish of \_\_\_\_\_ (or for the ward), as follows : \_\_\_\_\_ ?

“(b.) Have you already voted at the present election of District Councillors for the district of \_\_\_\_\_ (in this or any other parish or ward) ?

“2. A person required to answer either of these questions shall not receive a ballot paper or be permitted to vote until he has answered it.”

#### BYE-ELECTIONS AND CASUAL VACANCIES.

It would be better for everybody if casual vacancies in the office of councillor were ignored, and that in the event of any vacancy in the number of the council by death, resignation, or otherwise between the ordinary times appointed for the annual elections that the remaining members should continue and be competent to act without holding any election to fill a vacancy. That was so with local boards created by the Public Health Act, 1848.

It is provided by section 48 (4) *b*, Local Government Act, 1894, that nothing in the Act shall authorise or require a returning officer to hold an election to fill a casual vacancy which occurs within six months before the ordinary day of retirement from the office in which the vacancy occurs, and the vacancy shall be filled at the next ordinary election,

and the Election Order, 1898, provides by Rule 22 for filling up casual vacancies at the ordinary elections.

An opinion of the Attorney-General is quoted in Vol. 60, J.P. 800, who considered that the words "*retirement from the office in which the vacancy occurs*" mean the time when the councillor would have gone out of his particular office at the end of the term for which he was elected. If this were so it might be necessary to hold a bye-election in any month; but the words are "*retirement from the office*" not from *his* office, and the ordinary day of retirement from the office of councillor occurs annually. The Local Government Board have read the clause as referring to the annual retirement, so that in all cases where a vacancy occurs within six months of the 15th April a bye-election should not be holden.<sup>1</sup> Between April and October there may be a bye-election to fill a casual vacancy after due notification. In such an election E. Order, Sched. V., section 40 (2) applies.

## THE CONSTITUTION OF DISTRICT COUNCILS.

### *The Urban District Council.*

The alteration of the style of the Urban Sanitary Authority by section 21, Local Government Act, 1894, does not operate as a cesser of its corporate existence; it is continued by the Urban District Council. The qualifications of the electors and the

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<sup>1</sup> The Election Order has the force of an Act. The Board have not altered rule 22, although the practice in filling up casual vacancies is variable.

mode of election are different. The parochial electors, the persons registered in the Local Government register of electors and the Parliamentary register which relates to the parishes within the Urban District, elect the councillors by ballot, and the election is regulated by rules framed pursuant to the Local Government Act, 1894, by the Local Government Board (Local Government Act, 1894, sections 23-48).

Section 23 of the Local Government Act, 1894, is as follows :—

“As from the appointed day, where an Urban District is not a borough—

“(1.) There shall be no ex-officio or nominated members of the Urban Sanitary Authority ;

“(2.) A person shall not be qualified to be elected or to be a councillor unless he is a parochial elector of some parish within the district, or has during the whole of the twelve months preceding the election resided in the district, and no person shall be disqualified by sex or marriage for being elected or being a councillor. So much of any enactment whether in a public general or local and personal Act as relates to the qualification of a member of an Urban Sanitary Authority shall be repealed ;

“(3.) The parochial electors of the parishes in the district shall be the electors of the councillors of the district, and, if the district is divided into wards, the electors of the councillors for each ward shall be such of the parochial electors as are registered in respect of qualifications within the ward ;

“(4.) Each elector may give one vote and no more for each of any number of persons not exceeding the number to be elected ;

- “(5.) The election shall, subject to the provisions of this Act, be conducted according to rules framed under this Act by the Local Government Board ;
- “(6.) The term of office of a councillor shall be three years, and one-third, as nearly as may be, of the Council, and if the district is divided into wards one-third, as nearly as may be, of the councillors for each ward, shall go out of office on the fifteenth day of April in each year, and their places shall be filled by the newly elected councillors. Provided that a County Council may on request made by a resolution of an Urban District Council, passed by two-thirds of the members voting on the resolution, direct that the members of such Council shall retire together on the fifteenth day of April in every third year, and such order shall have full effect.”

It will be observed that there are two ways of qualifying for the office of district councillors :—

- (1.) By registration in the Local Government Register of Electors or the Parliamentary Register which relates to a parish within the Urban District ; or
- (2.) By residing in the Urban District during the whole of the 12 months preceding the election.

No property qualification is required. The Register of Parochial Electors is conclusive in regard to the qualification of candidate for nomination as a candidate and for being elected a councillor.

If he is registered at the time of election he is entitled to retain his seat in the Council for the term

<sup>1</sup> The Order may be rescinded. The retirement and entry into office are to be on the 15th April. 63 & 64 Vict. c. 16.



of three years, though he may cease to be qualified as a parochial elector.

If he qualified for office by residence only the ceasing to reside within the Urban District after election will not affect his membership of the Council. What suffices to constitute an effectual residence depends on the facts of each case. A person may have more than one residence. The party must possess a bedroom, though an uninterrupted use of it is not essential. If, when he goes away from the district, he retains an intention to return, and power to do so when he chooses, he does not cease to reside in it; but loss of liberty to return at any time, or abandonment of intention to return, will end residence forthwith.<sup>1</sup>

The elections of Urban and Rural District councillors are conducted according to two Election Orders issued by the Local Government Board on January 1st, 1898. The rules are very similar. We propose to discuss them in the following order:—

- (1.) Proceedings previous to the election :
- (2.) Proceedings at the election :
- (3.) Proceedings after the election :
- (4.) Election expenses.

### *The Rural District Council.*

The corporate bodies called Rural District Councils, created by the Local Government Act, 1894, are, in rural parishes, the successors of the Rural Sanitary

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<sup>1</sup> Powell v. Guest, 1864, 18 Q.B., N.S. 72.

Authorities and Highway Authorities, invested with powers relating to sanitary and highway matters. The Rural District Council is constituted pursuant to section 24, which is as follows :—

“Section 24.—(1.) The District Council of every Rural District shall consist of a chairman and councillors, and the councillors shall be elected by the parishes or other areas for the election of guardians in the district.

“(2.) The number of councillors for each parish or other area in a Rural District shall be the same as the number of guardians for that parish or area.

“(3.) The District Councillors for any parish or other area in a Rural District shall be the representatives of that parish or area on the Board of Guardians, and when acting in that capacity shall be deemed to be the guardians of the poor, and the guardians as such shall not be elected for that parish or area.

“(4.) The provisions of this Act with respect to the qualification, election and term of office and retirement of guardians, and to the qualification of the chairman of the Board of Guardians shall apply to District Councillors and to the chairman of the District Council of a Rural District, and any person qualified to be a guardian for a union comprising the district shall be qualified to be a District Councillor for the district.”

The qualification for the office of guardian are mentioned in section 20 (2) of the Act thus :—

“(1.) There shall be no ex-officio or nominated guardians.

“(2.) A person shall not be qualified to be elected or to be a guardian for a poor law union unless he is a parochial elector of some parish within the union, or has during the whole of the twelve months preceding the election resided in the union, or in the case of a guardian for a parish wholly or partly situate within the area of a borough, whether a County Borough or not, is qualified to be elected a councillor for that

borough, and no person shall be disqualified by sex or marriage for being elected or being a guardian. So much of any enactment, whether in a public general or local and personal Act, as relates to the qualification of a guardian shall be repealed :

“(3.) The parochial electors of a parish shall be the electors of the guardians for the parish, and, if the parish is divided into wards for the election of guardians, the electors of the guardians for each ward shall be such of the parochial electors as are registered in respect of qualifications within the ward :

“(4.) Each elector may give one vote and no more for each of any number of persons not exceeding the number to be elected :

“(5.) The election shall, subject to the provisions of this Act, be conducted according to rules framed under this Act by the Local Government Board :

“(6.) The term of office of a guardian shall be three years. and one third, as nearly as may be, of every Board of Guardians shall go out of office on the fifteenth day of April in each year, and their places shall be filled by the newly elected guardians. Provided as follows :—

“(a.) Where the County Council on the application of the Board of Guardians of any union in their county consider that it would be expedient to provide for the simultaneous retirement of the whole of the Board of Guardians for the union, they may direct that the members of the Board of Guardians for that union shall retire together on the fifteenth day of April in every third year, and such order shall have full effect, and where a union is in more than one county, an order may be made by a joint committee of the councils of those counties :

“(b.) Where at the passing of this Act the whole of the guardians of any union, in pursuance of an order of the Local Government Board, retire together at the end of every third year, they shall continue so to retire unless the County Council, or a joint

committee of the County Council, on the application of the Board of Guardians, or of any District Council of a district wholly or partially within the union, otherwise direct :

“(7.) A Board of Guardians may elect a chairman or vice-chairman, or both, and not more than two other persons, from outside their own body, but from persons qualified to be guardians of the union, and any person so elected shall be an additional guardian and member of the Board.”

Thus a person is qualified for the office of Rural District Councillor ; if

- (1) he is a parochial elector of some parish within the Poor Law Union ;
- (2) he has during the whole of the twelve months preceding the election resided in the Union.

Where a parish is wholly situate within the area of a borough, the guardians of the poor are elected from persons qualified to be elected Town Councillors of that borough.

The occupiers of qualifying property who reside in boroughs are enrolled as burgesses, pursuant to section 9, Municipal Corporations Act, 1882, and non-residents so entitled to be enrolled who possess the required property qualification are qualified for the office of Town Councillor.

Persons in Holy Orders and the regular ministers of a dissenting congregation may be elected guardians if they are qualified as parochial electors or by residence. The guardians elected for parishes in urban parishes do not act as Rural District Councillors.

## THE CONSTITUTION OF DISTRICT COUNCILS.

*The Urban District Council—The Councillors—  
Their Qualification Term of Office—The  
Rural District Council—Loss of Qualification  
—Disqualifications—Vacant Offices—Penalties.*

Notwithstanding disqualification or want of or cesser of qualification for holding a corporate office the acts and proceedings of a person in possession of it and acting therein are as valid and effectual as if he were qualified. The 9th Rule of the First Schedule of the Public Health Act, 1875, provides that--

“The proceedings of a District Council shall not be invalidated by any vacancy or vacancies among their members, or by any defect in the election of such Council, or in the election or selection or qualification of any members thereof.”

The disqualifications for the office of District Councillor are enumerated in section 46 of the Local Government Act, 1894.

Each subsection can be conveniently considered by itself :--

“(1.) A person shall be disqualified for being elected or being a member or chairman of a Council of a parish or of a district other than a borough or of a Board of Guardians if he—

“(a) is an infant or an alien ;”

An infant in the legal intendment of the term, is a person who has not attained the age of 21 years.

If this disqualification exists at the time of nomination, it appears that a candidate does not

become qualified by attaining his majority before election.<sup>1</sup>

Aliens are the children of a foreign father, born in a foreign country.

Pursuant to the Naturalization Act, 1870, 33 & 34 Vict. c. 14, s. 71, a certificate of naturalization may be granted to an alien who has been resident in the United Kingdom for a period not less than five years. Such certificate entitles an alien to all political and other rights of a natural-born British subject.

“(b) has within twelve months before his election, or since his election, received union or parochial relief ; or ”

Relief given to a wife or children under the age of sixteen, not being blind or deaf and dumb, is considered as given to the husband or father (4 & 5 Will. 4 c. 76, s. 56) ; but relief given to a father does not disqualify a son.<sup>2</sup> Employment by the Guardians at a rate of wages under the ordinary rate of hire, operates as the receipt of relief ;<sup>3</sup> but receipt of the funds or doles of parish or other charities does not disqualify for office under the Local Government Act, 1894, or Public Health Acts.

The Medical Relief Disqualification Removal Act, 1885, does not apply to the office of Guardian.

“(c) has, within five years before his election or since his election, been convicted either on indictment or summarily

<sup>1</sup> See *Harford v. Linskey*, 1899, 1 Q.B. 852.

<sup>2</sup> *R. v. Ireland*, 1868, L.R., 3 Q.B. 130.

<sup>3</sup> *Margarill v. Whitehaven*, 1885, 16 Q.B.D. 242.

of any crime, and sentenced to imprisonment with hard labour without the option of a fine, or to any greater punishment, and has not received a free pardon, or has, within or during the time aforesaid, been adjudged bankrupt, or made a composition or arrangement with his creditors ; or ”

A crime is an offence against the Crown.<sup>1</sup> This clause excludes imprisonment inflicted in civil process, and fines inflicted in criminal process.

An assignment of a debtor's property, whether the creditors are paid in full or not, is an arrangement within the meaning of this Act, and where a partnership make an arrangement with their creditors, the members of the partnership are disqualified.<sup>2</sup>

“(d) holds any paid office under the Parish Council or District Council, or Board of Guardians, as the case may be ; or ”

The expression “office” includes any place, situation, or employment, and the expression “officer” is construed accordingly (L.G. Act, 1888, s. 100).

An office of profit is not necessarily a paid office.<sup>3</sup> The treasurer may make profitable use of the money of the Council.

Sub-section 5 provides that—

“(5.) A person disqualified for being a Guardian shall also be disqualified for being a Rural District Councillor.”

This attaches certain disqualifications to Rural District Councillors which are not enumerated in section 46.

5 & 6 Viet. c. 57, s. 14, enacts that no person during the time for which he holds the office of

<sup>1</sup> *Conybeare v.* L.S.B. 1891, 1 Q.B. 118.

<sup>2</sup> *Ward v. Radford*, 1895, 11 T.L.R. 587.

<sup>3</sup> If the District Council acquire power to appoint the assistant overseers, Councillors cannot then hold that office.

Assistant Overseer of any parish, nor any paid officer engaged in the administration of the laws for the relief of the poor, nor any person who, having been a paid officer, shall have been dismissed within five years previously from such office, pursuant to 4 & 5 Will. 4. c. 76, shall be capable of serving as a Guardian. And no person receiving any fixed salary or emolument from the poor rates in any parish or union shall be capable of serving as a Guardian in such parish or union. Thus, in Rural Districts, to Relieving Officers and Assistant Overseers a general disqualification attaches; and to other paid officers a disqualification for office in the particular parish or union.

There is an exemption in favour of medical practitioners who receive fees under the Infectious Disease (Notification) Acts, 1889.

“(c) is concerned in any bargain or contract entered into with the Council or Board, or participates in the profit of any such bargain or contract, or of any work done under the authority of the Council or Board.”

This prohibition is aimed at all pecuniary interests. A bargain is a sale for money. One may contract with the Council without participating in profits of work done under their authority, as in agreements between the Council and frontagers relating to the execution of private street works. But an interest by way of sub-contract or supply of materials to a person who contracts with the Council will disqualify.<sup>1</sup>

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<sup>1</sup> Nutton v. Wilson, 1889, 22 Q.B.D. 711.



Interests bring conflict between the public duty to ratepayers and private ends. The Councillor must not be exposed to temptation to take more care of his own money than he does of that of the ratepayers. However slight the pecuniary interest may be it comes within reach of section 46. An assignment to a banker of a contract with the Council as security for a loan was held to disqualify the money lender; although interest on a loan made direct to the Council is not prohibited.

The coveted warrant for appointment as official purveyor to the Council disqualifies the tradesman. In *Nell v. Longbottom*, 1894, 2 Q.B. 767, the official chemist supplied a member of the fire brigade with four pennyworth of oil, and the profits of that official were deemed to disqualify him for the office of Councillor.

This disqualification arises, although the contract, owing to some informality, may be unenforceable;<sup>2</sup> and it continues so long as does the contractual relation out of which the interest accrues; but the contract is not void because it entails a disqualification on a Councillor unless he acts at once as a party and votes as Councillor on a contract between himself and the Council.<sup>3</sup>

Generally, if money may be obtained by reason of the existence of a contract, there is an interest in it.

<sup>1</sup> *Hunnings v. Williamson*, 1883, 11 Q.B.D. 533.

<sup>2</sup> *Reg. v. Francis*, 1852, 18 Q.B. 526.

<sup>3</sup> *Read v. Punter*, 1898, 14 T.L.R. 455, and see *Foster v. Ox. & W. Ry. Co.*, 1853, 13 C.B. 200.

The Act strikes at all who come within its terms, not merely at those who yield to temptations.

“(2.) Provide<sup>1</sup> that a person shall not be disqualified for being elected or being a member or chairman of any such Council or Board by reason of being interested—

“(a) in the sale or lease of any lands or in any loan of money to the Council or Board, or in any contract with the Council for the supply from land, of which he is owner or occupier, of stone, gravel, or other materials for making or repairing highways or bridges, or in the transport of materials for the repair of roads or bridges in his own immediate neighbourhood<sup>1</sup>; or”

The word “lands” includes messuages, tenements, and hereditaments, houses, and buildings of any tenure (Interpretation Act, 1889, section 3). This exemption covers a lease of land whether made by or to the District Council;<sup>2</sup> and lettings for a short period.<sup>3</sup>

Contracts for transport of highway materials by a Conncillor are not touched by section 46, Highway Act, 1835, which imposes a penalty on a Surveyor of Highways who has an interest in such a contract. The office of surveyor is now filled by the corporate body, not by Conncillors individually.<sup>4</sup>

“(b) in any newspaper in which any advertisement relating to the affairs of the Council or Board is inserted; or

<sup>1</sup> The sale of sand or gravel to a contractor with the Council for the erection of buildings is a concern in a contract which disqualifies. *Barnacle v. Clark*, 1900 1 Q.B. 279.

<sup>2</sup> *R. v. Gaskarth*, 1880, 5 Q.B.D. 321.

<sup>3</sup> *See Nell v. Longbottom*, 1894, 1 Q.B. 767.

<sup>4</sup> *Buckley v. Hansen*, 1898, 77 L.T. 664.

“(c) in any contract with the Council or Board as a shareholder in any joint stock company; but he shall not vote<sup>1</sup> at any meeting of the Council or Board on any question in which such company are interested, except that in the case of a water company or other company established for the carrying on of works of a like public nature, this prohibition may be dispensed with by the County Council.”

Apart from express statutory prohibitions, personal interest or affection does not debar members of public authorities from taking part in business. Interests which accrue otherwise than by way of contract do not debar a District Councillor from voting under the Public Health Act. There is such a prohibition in section 21, Municipal Corporation Act, 1882.

“(3.) Where a person who is a Parish Councillor, or is a candidate for election as a Parish Councillor, is concerned in any such bargain or contract, or participates in any such profit, as would disqualify him from being a Parish Councillor, the disqualification may be removed by the County Council if they are of opinion that such removal will be beneficial to the parish.

“(4.) Where a person is disqualified by being adjudged bankrupt or making a composition or arrangement with his creditors, the disqualification shall cease, in case of bankruptcy, when the adjudication is annulled, or when he obtains his discharge with a certificate that his bankruptcy was caused by misfortune without any misconduct on his part, and, in case of composition or arrangement, on payment of his debts in full.”

This disqualification attaches only to a person who has within five years before his election been

<sup>1</sup> Councillors are not to vote on any question arising under Part I. and II. of the Housing of the Working Classes Act, 1890, and relating to property in which they are beneficially interested.

adjudged bankrupt, and ceases at the end of that period, whereas under the Bankruptcy Act, 1883-90, the disqualification remained<sup>1</sup> until five years from the date of the bankrupt's discharge.

"(6.) If a member of the Council of a parish, or of a district other than a borough, or of a Board of Guardians, is absent from meetings of the Council or Board for more than six months consecutively, except in case of illness or for some reason approved by the Council or Board, his office shall on the expiration of those months become vacant."<sup>1</sup>

Thus the absentee is not unseated until he has failed to discharge his duties by omitting to attend all the meetings of the Council for more than six months consecutively, and as by section 46 (7) the office must be declared vacant by the Council, another month at least must, in the majority of cases, elapse before the vacancy can be filled. He can regain his seat by a surprise attendance at the end of the six months, but this would be scant courtesy for the confidence reposed in him by the parochial electors. Retention of the seat can serve no useful purpose; but it is "full" of him. The anomaly of an absentee member arises from the double qualification for office. The Act reads, sections 20 (2) and 23 (2): "A person shall be qualified to be elected and to be a District Councillor (1) who is a parochial elector of some parish in the district, or (2) has during the whole of the 12 months preceding the election resided in the district.

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<sup>1</sup> Officers and soldiers on service are relieved from disqualification by 63 & 64 Vict. c. 46.

The loss of either qualification after election does not unseat a member. The test is made at the time of the election.

An absentee should be notified of the intention of the Council to treat his seat as vacant. There may be some reason of which the Council will approve.<sup>1</sup>

What is sufficient to constitute presence at a meeting depends on circumstances. Looking on while the Council do its business is not enough to save the absentee's seat. The absentee Rural District Councillor ceases to be qualified to act as Guardian of the poor.

"(7.) Where a member of a Council or Board of Guardians becomes disqualified for holding office, or vacates his seat for absence, the Council or Board shall forthwith declare the office to be vacant, and signify the same by notice signed by three members and countersigned by the Clerk of the Council or Board, and notified in such manner as the Council or Board direct, and the office shall thereupon become vacant.

"(8.) If any person acts when disqualified, or votes when prohibited under this section, he shall for each offence be liable on summary conviction to a fine not exceeding twenty pounds.

"(9.) This section shall apply in the case of any authority whose members are elected in accordance with this Act in like manner as if that authority were a district council, and in the case of London auditors as if they were members of a district council."

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<sup>1</sup> Richardson v. Methley, 1893, 3 Ch. 510.

## MEETINGS AND PROCEEDINGS.

*Regulations—Place of Meeting—The Board Room—  
—The Outside Chairman—Vice-Chairman—  
Holidays—Lapse—Duties of Chairman—  
Women—The Minutes—The Annual Meeting  
—The Justice of the Peace.*

District Councils are empowered to make regulations with respect to the mode of conducting their business under the Public Health Acts, and they may cause any regulations so made by them to be published in such manner as they see fit (section 188, P.H. Act, 1875). The place of meeting may be within or without the district, and land wanted for the site may be purchased by agreement or compulsorily under sections 175 and 176, Public Health Act, 1875.

The Council must redeem any title rentcharge charged on such land (41 & 42 Viet. c. 42, s. 1), and they are rateable in respect of the occupancy of the buildings for the purposes of the Act.

Section 197, Public Health Act, 1875, is as follows :—

“Section 197.—Every Urban Authority shall from time to time provide and maintain such offices as may be necessary for transacting their business and that of their officers and servants under this Act.”

And by sub-section 3 of section 59, Local Government Act, 1894—

“(3.) Any Rural District Council shall be entitled to use for the purpose of their meetings and proceedings the board

room and offices of any Board of Guardians for the Union comprising their district at all reasonable hours, and if any question arises as to what hours are reasonable it may be determined by the Local Government Board."

The meetings are not to be holden in premises licensed for the sale of intoxicating liquors, except in cases where no other suitable room is available for such meeting either free of charge or at a reasonable cost (section 61, L.G. Act, 1894).

Section 59 omits the words "free of charge," so there is nothing to debar the guardians from making a charge for the use of the room, but ordinarily they would not charge more than is necessary to cover expenditure about heating and lighting and any damage done.

Section 59 of the Local Government Act, 1894, applies section 199, Public Health Act, 1875, and Schedule I. of that Act to the meetings and proceedings of District Councils and Boards of Guardians; except that the Chairman of the Council or Board may be elected from outside the Councillors or Guardians; and a power is conferred to appoint a Vice-Chairman to hold office during the term of office of the Chairman, and to have, in the absence or during the inability of the Chairman the same powers and authority.

Section 199, Public Health Act, 1875, is as follows :—

"Section 199.—Every Urban Authority (not being a Council of a Borough) shall hold an annual meeting and other meetings for the transaction of business under this Act once

at least in each month, and at such other times as may be necessary for properly executing their powers and duties under this Act."

The Act does not provide for a vacation at any period of the year, so there is no statutory warrant for the practice of Urban District Councils to drop the meeting which should be holden in September.

Schedule I., Public Health Act, 1875, is as follows :—

*" Rules as to Meetings and Proceedings.*

1. Every District Council shall from time to time make regulations with respect to the summoning, notice, place, management, and adjournment of their meetings, and generally with respect to the transaction and management of their business under this Act.

An adjourned meeting is a continuation of the first meeting, and notice of it is not necessary unless pursuant to a regulation.<sup>1</sup>

Regulations when adopted by authority of the Council must be strictly followed. There is no general rule of law making necessary notice of intention to move a resolution or to prevent the Council from rescinding a resolution : but where notice of a meeting or motion is required by the regulations, care must be taken to notify every member, as an omission in that respect may render the proceedings invalid.<sup>2</sup>

2. No business shall be transacted at any such meeting unless at least one-third of the full number of members be present thereat, subject to this qualification, that in no case shall a larger quorum than seven members be required.

<sup>1</sup> Seadding v. Lornant, 1851, 3 H.L. Cases 418.

<sup>2</sup> Dobson v. Fursey, 1831, 7 Bing. 305.



The regulations should provide for the course to be adopted by the clerk in case the quorum are not present : and by sub-section (5) section 59, Local Government Act, 1894 :—

“ If any District Council, other than a Borough Council, become unable to act, whether from failure to elect, or otherwise, the County Council of the county in which the district is situate may order elections to be held and may appoint persons to form the District Council until the newly elected members come into office ”

3. Every District Council and Board of Guardians shall, from time to time, at their annual meeting appoint some person to be Chairman for one year at all meetings at which he is present.

The Chairman of a District Council is, unless a woman or personally disqualified, by virtue of his office a Justice of the Peace (L.G. Act, 1894, s. 22).

It is the duty of the Chairman to preserve order,<sup>1</sup> conduct proceedings according to the regulations, and to take care that the sense of the Council is properly ascertained. He has no power to stop or adjourn the meeting at his own will, and if he proposes to do so, it is competent for the meeting to resolve to go on with the business for which it has been convened, and to appoint another Chairman for that object.<sup>2</sup> The Chairman is appointed for one year, and as there is only one annual meeting in a year, it would seem that an outgoing Chairman can be entitled

<sup>1</sup> Councillors who by disorderly conduct hinder the proceedings of the Council may be removed by force. When the office of a Councillor's office has been duly declared vacant, he should not be permitted to enter the place of meeting.

<sup>2</sup> Natl. Dwellings Co. v. Sykes, 1894, 3 Ch. 159 ; Reg. v. Doyley, 1810, 12 A. & E. 139.

to preside only at the annual meeting at the commencement of his year of office, but the Local Government Board are of opinion that the outgoing Chairman is entitled to preside and to exercise the right of giving a casting vote until the election of his successor, unless he is appointed from among the Councillors who go out of office on 15th April.

4. If the Chairman so appointed dies, resigns, or becomes incapable of acting, another member shall be appointed to be Chairman for the period during which the person so dying, resigning, or becoming incapable would have been entitled to continue in office, and no longer.

The disqualifications for the office of District Councillors also attach to the office of Chairman, whether elected from the Council or from outside.

Where the Chairman of a District Council held the office of clerk to the Justices, it was held that he vacated the latter office.<sup>1</sup>

5. If the Chairman is absent from any meeting at the time appointed for holding the same, the members present shall appoint one of their number to act as Chairman thereof.

6. The names of the members present, as well as of those voting on each question, shall be recorded, so as to show whether each vote given was for or against the question.

This rule forbids voting by ballot, but the voting is not necessarily by voice, and where officers are to be appointed a preliminary selection may be made by marking a list with initials of the members who vote.

"7. Every question at a meeting shall be decided by a majority of votes of the members present and voting on that question."

<sup>1</sup> Q. v. Douglas, 1898, 1 Q.B. 361.

Where Councillors are present and do not vote they are not considered in the count, but they save themselves from loss of qualification as absentees.

"8. In case of an equal division of votes the Chairman shall have a second or casting vote."

The Chairman can give his casting vote to decide the question by a majority whether he has given his vote on the motion or has waited till the number of votes is found to be equal.

"9. The proceedings of a District Council shall not be invalidated by any vacancy or vacancies among their members or by any defect in the election of such board, or in the election or selection or qualification of any members thereof."

Disapprovals of plans by the Council cannot be called in question on the ground that some of the members were not duly elected.<sup>1</sup>

"10. Any minute made of proceedings at a meeting, and copies of and orders made or resolutions passed at a meeting, if purporting to be signed by the Chairman of the Meeting at which such proceedings took place or such orders were made or resolutions passed, or by the Chairman of the next ensuing meeting, shall be received as evidence in all legal proceedings, and until the contrary is proved, every meeting where minutes of the proceedings have been so made shall be deemed to have been duly convened and held, and all the proceedings thereat to have been duly had."

This rule does not make it obligatory to keep a book of minutes, but the Accounts Order of 22nd March 1880, directs the Clerk of the Council from time to time to enter in the Minute Book a statement of orders drawn on the treasurer according to the prescribed form.

<sup>1</sup> Newhaven L.B. v. N. School Board 1885, 30 Ch.D. 350.

Ratepayers have no right to inspect the minutes of the Urban District Council; subject to any regulations in force the Councillors may do so. In a Rural Parish every parochial elector may at all reasonable times, without payment, inspect and take copies of and extracts from all books, accounts, and documents belonging to or under the control of the Rural District Council (section 58, L.G. Act, 1894).

“11. The Annual Meeting of a District Council shall be holden as soon as may be convenient after the 15th of April in each year.”

The first business at the Annual Meeting is the election of Chairman. The retiring Councillors go out of office and the newly elected Councillors come in office on the 15th April.

“12. The first meeting of a District Council for a district constituted after the passing of this Act shall be held at such place and on such day (not being more than ten days after the completion of the election) as the Returning Officer may by written notice to each member of the Council appoint; and the members shall appoint one of their number to be Chairman at such meeting, and shall also appoint one of their number to be Chairman for one year at all meetings at which he is present.”

#### CHAIRMAN.

Every District Council at their Annual Meeting in April must appoint some person to be Chairman for one year at all meetings at which he is present (Public Health Act, 1875, Schedule L, Part I., 3; Local Government Act, 1894, section 59). Any person, male or female, of full age, whether a coun-

cillor or not, may be appointed to the office of Chairman, and by acceptance of the office becomes a member of the District Council, and in case of an equal division of votes at a meeting has a second or casting vote. The disqualifications for the office of Chairman are the same as those for the office of councillor, which are enumerated in section 46, Local Government Act, 1894.

Section 22, Local Government Act, 1894, provides that :—

“The Chairman of a District Council, unless a woman or personally disqualified by any Act, shall be by virtue of his office justice of the peace for the county in which the district is situate, but before acting as such justice he shall, if he has not already done so, take the oaths required by law to be taken by a justice of the peace other than the oath respecting the qualification by estate.”

The sheriffs and solicitors in practice in the county are disqualified for acting as justices of the peace.<sup>1</sup> In pursuance of the Promissory Oaths Act, 1871, the Chairman, as *ex officio* justice of the peace for the county, may take the oath of allegiance and judicial oath before two justices of the peace for the county sitting in petty sessions, and the fee taken by the clerk to the justices for administering such oaths is the same as the fee charged for administering an oath in any other kind of business according to the table of justices clerks' fees for the time being, and the clerk can remit that. The fees payable by

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<sup>1</sup> If a solicitor has ceased to practise he is not disqualified because he takes out a certificate (*R. v. Douglas*, 1898, 1 Q.B. 560).

county justices, other than *ex officio* justices, are usually about 2*l.* and 5*s.* to the clerk of the peace for administering the oaths. It is the practice in connection with the appointment of a justice of the peace other than one who acts by virtue of office to send up the Rolls of the Commission of the Peace to the Clerk of the Crown with a fee of 1*l.* receivable, pursuant to the Courts of Justice (Salaries and Funds) Act, 1869, by the Crown Office. The Commission is returned to the clerk of the peace with the new name added, who then prepares the forms of the oaths which are taken and subscribed by the newly appointed justices. Disbursements and fees are payable to the clerk of the peace for correspondence, but he is not entitled to charge a fee for doing the duty of his office unless a fee is warranted by Statute. What is known as "the justice's qualifying fee" varies in the counties from 10 to 5 guineas. It is a mere honorarium.<sup>1</sup>

The oath of allegiance is :—

"I, \_\_\_\_\_, do swear that I will be faithful and bear true allegiance to His Majesty King Edward VII., his heirs and successors, according to law. So help me God."

The judicial oath is :—

"I, \_\_\_\_\_, do swear that I will well and truly serve our Sovereign Lord King Edward VII. in the office of \_\_\_\_\_, and I will do right to all manner of people after the laws and usages of this realm, without fear or favour, affection, or ill will. So help me God."

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*In re Howe*, 1887, 18 Q.B.D. 576; *Maule v. White*, 1896, 60 J.P. 185.

When a person ceases to be chairman of the District Council he ceases to be a justice of the peace. By section 59 (2), Local Government Act, 1894, District Councils are empowered to appoint vice-chairmen to hold office during the term of office of the chairman, but they cannot be appointed from outside the Council, nor do they act as justices of the peace.

### URBAN POWERS IN RURAL DISTRICTS.

#### *Provisional Orders by L.G. Board—Applications by County Councils—Special Drainage Districts—Loans.*

Rural District Councils can adopt Part 3 of the Public Health Acts Amendment Act, 1890, so far as it is applicable to a Rural Authority, without prejudice to its investment with urban powers by the Local Government Board (P.H.A.A. Act, 1890, section 3); and they may also have such powers of Urban Authorities under the Public Health Acts, or any other Act, and such provisions of any of those Acts relating to Urban Districts shall apply to a Rural District, as the Local Government Board by general order direct (L.G. Act, 1894, section 25 (5 and 7)). Orders of the Local Government Board, under section 276, may be made on the application of a County Council or of a Parish Council.

By this extension the Board are empowered to apply to a Rural District the provisions of any Act

relating to Urban Districts, although such provisions do not confer urban powers, *e.g.*, the Technical Instruction Acts, 1889, 1891.

Expenses incurred by a Rural Council in the execution of powers with which they are invested pursuant to the Public Health Act, 1890, are defrayed as general expenses, unless the order of the Local Government Board otherwise directs.<sup>1</sup>

Section 276, Public Health Act, 1875, is as follows :—

“276. The Local Government Board may, on the application of the Authority of any Rural District, or of persons rated to the relief of the poor, the assessment of whose hereditaments amounts at the least to one-tenth of the net rateable value of such district, or of any contributory place therein, by order to be published in the ‘London Gazette,’ or in such other manner as the Local Government Board may direct, declare any provisions of this Act in force in Urban Districts to be in force in such Rural District or contributory place, and may invest such Authority with all or any of the powers, rights, duties, capacities, liabilities, and obligations of an Urban Authority under this Act, and such investment may be made either unconditionally or subject to any conditions to be specified by the Board as to the time, portion of the district, or manner during at and in which such powers, rights, duties, liabilities, capacities, and obligations are to be exercised and attached: Provided that an order of the Local Government Board, made on the application of one-tenth of the persons rated to the relief of the poor in any contributory place, shall not invest the Rural Authority with any new powers beyond the limits of such contributory place.”

Sections 42, 44, 157, and 158, Public Health Act, 1875, which relate to cleansing and watering of streets, and to the making of bye-laws for the

<sup>1</sup> *Lancs. & Yorks. Ry. v. Bolton*, 1890, 15 A.C. 323.



prevention of nuisances, and with respect to new buildings, are generally put in force in Rural Districts. Sections 150 and 152, under which private streets may be required to be made good, and may afterwards be declared highways repairable by the public, are rarely applied to Rural Districts. In dealing with applications, local conditions guide the Board, and the sections are only put in force in regard to the particular streets specified in the Order, and which have already been properly sewered.

A Rural Authority, by resolution to be approved by the Local Government Board, but not otherwise, may constitute any portion of the area within their jurisdiction a special drainage district for the purpose of charging thereon exclusively the expenses of works of sewerage, water supply, or of other works which by this Act are or by order of the Local Government Board may be declared to be special expenses, and thereupon such area shall become a separate contributory place. (Section 277.)

A special drainage district in which a loan has not been raised may be merged in the parish in which it is situated by order of the Board, but where a loan has been raised, a Provisional Order is necessary to dissolve the district (section 270). Where a loan is raised for the execution of works it is made a charge on the rates of the whole parish, the Act not having any provision to restrict the charge to the rates of a contributory place which is a part of a parish.<sup>1</sup>

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<sup>1</sup> Horn v. Sleaford R.D.C., 1898, 2 Q.B. 358.

## COMMITTEES.

*Agency—The Approval of the Council—Ratification—Vacancies—Regulations—Joint Committees.*

The appointment of a committee for the exercise of any powers of the District Council does not operate as a resignation of the powers of the Council. The delegated powers can be resumed at any time by resolution of the Council. The committee are the agents of the Council in relation to matters entrusted to them. They are not incorporated and cannot be sued as a committee, nor is any committeeman liable for acts done in that capacity.<sup>1</sup>

The appointment of committees is made pursuant to section 56, Local Government Act, 1894, which is as follows.—

“56. A Parish or District Council may appoint committees consisting either wholly or partly of members of the Council, for the exercise of any powers which, in the opinion of the Council, can be properly exercised by committees, but a committee shall not hold office beyond the next annual meeting of the Council, and the acts of every such committee shall be submitted to the Council for their approval.

“Provided that where a committee is appointed by any District Council for any of the purposes of the Public Health Acts or Highway Acts, the Council may authorise the committee to institute any proceeding or do any act which the Council might have instituted or done for that purpose other than the raising of any loan or the making of any rate or contract.

“With respect to committees of Parish and District Councils the provisions in the First Schedule to this Act shall have effect.”

<sup>1</sup> Leicester Wks. Co. v. Nuttall, 1878, 4 Q.B.D. 18; Eaton v. Basker, 1888, 7 Q.B.D. 529.

The necessity of submitting the acts of a committee to the Council for approval indicates that the committee's acts are inoperative without a previous approval, thus reducing the authority of a committee to matters of investigation and the making of reports thereon ; but the High Court considers that the recognised rules of law applicable to the ratification of an agent's acts apply to the agency of a committee of a District Council. This enables a committee to act on the chance of obtaining the approval of the Council, and if they institute a proceeding without authority a consequent approval gives the proceedings a valid authorisation.<sup>1</sup>

To constitute a valid ratification three conditions must be satisfied—

- 1st. The agent whose act is sought to be ratified must have purported to act for the principal.
- 2nd. At the time the act was done the agent must have had a competent principal.
- 3rd. At the time of the ratification the principal must be legally capable of doing the act himself.

A committee cannot delegate their powers to be exercised by one of their number. They must act together.<sup>2</sup>

Any casual vacancy occurring by death, resignation, disqualification, or otherwise, in any committee may be filled up within six weeks by the authority which formed such committee out of qualified persons (section 203, Public Health Act, 1875).

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<sup>1</sup> *Firth v. Staines*, 1887, 2 Q.B. 70.

<sup>2</sup> *Cook v. Ward*, 1877, 2 C.P.D. 255.

If the District Council make no regulations relating to the conduct of business of committees they can make their own regulations. Schedule I., Part 4, Local Government Act, 1894, is as follows :—

“(1.) The quorum, proceedings, and place of meeting of a committee, whether within or without the parish or district, and the area (if any) within which the committee are to exercise their authority, shall be such as may be determined by regulations of the Council or Councils appointing the committee.

“(2.) Subject to such regulations, the quorum, proceedings, and place of meeting, whether within or without the parish or district, shall be such as the Committee direct, and the Chairman at any meeting of the Committee shall have a second or casting vote.”

The power to appoint Joint Committees for purposes other than financial, enables adjoining Local Authorities to unite for the purpose of exercising any statutory power either within or without the limits of their own districts. The powers delegated to a Joint Committee must be such as each of the appointing Councils can of itself exercise. A District Council may have a joint interest for some purposes with a Parish Council, but it is not clear from the words of section 57, Local Government Act, 1894, that a Joint Committee may be appointed by a Parish Council and a District Council. Section 57 is as follows :—

“57.—(1.) A Parish or District Council may concur with any other Parish or District Council or Councils in appointing out of their respective bodies a Joint Committee for any purpose in respect of which they are jointly interested, and in conferring, with or without conditions or restrictions, on any

such committee any powers which the appointing Council might exercise if the purpose related exclusively to their own parish or district.

“(2.) Provided that a Council shall not delegate to any such committee any power to borrow money or make any rate.

“(3.) A Joint Committee appointed under this section shall not hold office beyond the expiration of 14 days after the next annual meeting of any of the Councils who appointed it.

“(4.) The costs of a Joint Committee under this section shall be defrayed by the Councils by whom it is appointed in such proportions as they may agree upon, or as may be determined in case of difference by the County Council.

“(5.) Where a Parish Council can under this Act be required to appoint a Committee consisting partly of members of the Council and partly of other persons, that requirement may also be made in the case of a Joint Committee, and shall be duly complied with by the Parish Councils concerned at the time of the appointment of such Committee.”

The meetings of committees are not public. Their investigations have a wide scope, and to make them in public may be highly defamatory. It suffices to present an epitome of the minutes of a committee to the Council. Ratepayers have no right to inspect the minutes of the proceedings of a committee, and only Councillors appointed to act on the committee have a right to attend at the meetings. The accounts of committees are made up to the 31st day of March, and audited with the accounts of the Council. A County Council are empowered to employ a District Council as their agents to manage business arising in or affecting their district.<sup>1</sup>

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<sup>1</sup> L.G. Act, 1894, sec. 64.

By the Local Government Act, 1894, Schedule I,  
Part 3 :—

“(2.) A minute of proceedings at a meeting of a committee of a District Council, signed at the same or the next ensuing meeting by a person describing himself as, or appearing to be, chairman of the meeting at which the minute is signed, shall be received in evidence without further proof.

“(3.) Until the contrary is proved, every meeting in respect of the proceedings whereof a minute has been so made shall be deemed to have been duly convened and held, and all the members of the meeting shall be deemed to have been duly qualified, and the committee shall be deemed to have been duly constituted, and to have had power to deal with the matters referred to in the minutes.”



## CHAPTER 2.

## RATES AND EXPENSES.

*The District Fund—The General District Rate—  
The Retrospective Rate—Highway Expenses—  
The Estimate—The Valuation List—Tithe  
Rentcharge—Agricultural Rates Act, 1896—  
Exemptions—Railways.*

The District Fund is an affair of account. In Urban Districts any sum paid into it is applied from time to time in aid of the next General District Rate, and Rural Councils are not troubled with it. Any surplus of a rate remaining in the hands of overseers is paid to the Rural Authority to be credited to the accounts of the contributory place within which the rate was made, and is applied in reduction of the next call made on the contributory place for the purpose of defraying the expenses incurred by the Rural Council. In Urban Districts the District Fund consists of moneys directed by the Public Health Act to be carried to that account, derived from sale of lands purchased for statutory purposes, and which have ceased to be wanted for such purposes; from penalties or sums recovered on

account of any penalty paid over to the treasurer (section 254); from profits made on the sale of house refuse and other things collected under the Public Health Act (section 420).

Section 207, Public Health Act, 1875, enacts :—

“All expenses incurred or payable by an Urban Authority in the execution of this Act, and not otherwise provided for shall be charged on and defrayed out of the District Fund and General District Rate leviable by them under this Act.”

The expenses incurred in the execution of the additional powers conferred on the Council by the Local Government Act, 1894, are defrayed as general expenses (section 28, Local Government Act, 1894). In Urban Districts the rate income of the year, from audit to audit, is raised by the General District Rate. There is no limit to the amount of that rate and limits imposed by Local Acts do not apply to it (section 227).

The District Fund Account is to be kept by the Treasurer, and such moneys are to be applied by the District Council to defray expenses chargeable thereon under the Public Health Acts. To meet a deficiency a General District Rate may be levied (section 209). Section 210 enacts :—

“210. For the purpose of defraying any expenses chargeable on the District Fund which that fund is insufficient to meet, the Urban Authority shall from time to time, as occasion may require, make by writing under their common seal and levy in addition to any other rate leviable by them under this Act, a rate or rates to be called ‘General District Rates.’



"Any such rate may be made and levied either prospectively in order to raise money for the payment of future charges and expenses, or retrospectively in order to raise money for the payment of charges and expenses incurred at any time within six months before the making of the rate; in calculating the period of six months during which the rate may be made retrospectively, the time during which any appeal or other proceeding relating to such rate is pending shall be excluded.

"Public notice of intention to make any such rate, and of the time when it is intended to make the same, and of the place where a statement of the proposed rate is deposited for inspection, shall be given by the Urban Authority in the week immediately before the day on which the rate is intended to be made, and at least seven days previously thereto, but in case of proceedings to levy or recover any rate it shall not be necessary to prove that such notice was given."

The power to raise money by a rate is ordinarily enforceable against existing occupiers for things which the Rating Authority are doing from day to day. A rate can in no case be made retro-operative to include persons who have ceased to be occupiers when the rate is made, but it may include future charges, and such as have been incurred at any time within six months before the making of the rate. A debt is incurred when its amount is ascertained, dispute may delay ascertainment. A tradesman must get his bill paid within the rating year in which the liability is incurred, or sue the District Council within six months; then he can, after signing a judgment obtain an order of the High Court directing the Council to make a rate for the purpose of satisfying the judgment. Such order would have to

be made within six months after judgment was signed, unless there has been a stay of execution by agreement with the Council, then within six months after expiry of the stay.<sup>1</sup>

The audit does not fix the date when liability is incurred.<sup>2</sup> The general rule against a retrospective rate applies equally to a poor rate and to a sanitary rate, and except so far as a statute expressly authorises a retrospective rate it is invalid,<sup>3</sup> but a distinction prevails in regard to a Special Expenses Rate which may be raised from the persons who enjoy the benefit of the expenditure to defray which the rate is made. Delay in commencing an action may be excused, as where there has been a dispute and negotiation, then the Court will make an order for a rate at any time within the rating year in which judgment is signed.<sup>4</sup>

Costs of repairs of highways are ordinarily defrayed out of the General District Rate, but this is not necessarily so. Section 216, Public Health Act, 1875, provides that the costs of repairs of highways shall in an Urban District be defrayed as follows:—

“(1.) Where the whole of the district is rated for works of paving, water supply, and sewerage, or for works for such of these purposes as are provided for in the district, the cost of repair of highways shall be defrayed out of the General District Rate.

<sup>1</sup> *Q. v. Rotherham* L.B., 1858, 8 E. & B. 906.

<sup>2</sup> *Ib.* The six months runs from the time the bill is sent in. Compare *Corbett v. Badger*, 1900, 17 T.L.R. 475.

<sup>3</sup> *Saul v. Wighton* R.S.A., 1887, 56 L.T. 438.

<sup>4</sup> *R. v. Leigh* R.D.C., 1898, 1 Q.B. 836.

“(2.) Where parts of the district are not rated for works of paving, water supply, and sewerage, or for such of these purposes as are provided for in the district, the cost of repair of highways in those parts shall be defrayed out of a Highway Rate to be separately assessed and levied in those parts by the Urban Authority as Surveyor of Highways, and the cost of such repair in the residue of the district shall be defrayed out of the General District Rate.

“(3.) Where no public works of paving, water-supply, and sewerage are established in the district, the cost of repair of highways in the district shall be defrayed out of a highway rate, to be levied throughout the whole district by the Urban Authority as Surveyor of Highways.”

There is no limit to the poundage of a Highway Rate levied by a District Council.<sup>1</sup>

The Highway accounts are audited in the same manner as sanitary accounts, but a separate Highway Rate is raised pursuant to the Highway Act, 1835, section 27, which enacts that the Highway Rate is to be made, assessed, and levied upon all property liable to be rated and assessed to the relief of the poor, and also on woods, mines, and quarries of stone, and under the Rating Act, 1874 (37 & 38 Vict. c. 54, s. 10), plantations, rights of sporting, and mines are in like manner rateable.

This rate must be assessed according to the rateable values appearing in the valuation list in force (45 & 46 Vict. c. 27, s. 4, the Highway Rate Act, 1882), but the Agricultural Rates Act, 1896, renders the occupier (or owner if rated instead of the occupier) of agricultural land liable to pay one half only of the

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<sup>1</sup> *Dyson v. Greetland* L.B., 1884, 13 Q.B.D. 946.

rate in the pound payable in respect of buildings and other hereditaments (59 & 60 Vict. c. 16, s. 1. (1.)). Owners of small tenements may be rated in lieu of the occupiers.

The Council can divide their district pursuant to section 211 (4) for the purpose of rating a part of it separately to the General District Rate for works of paving, water supply, and sewage, and levy a Highway Rate on the other part, under section 216 (2), but they cannot divide their district for the purpose of levying a separate Highway Rate in each part.<sup>1</sup>

The existence of surface water drainage in highways has been deemed to be an establishment of public works which disentitle the Council to levy a separate Highway Rate, but the facts of each case must govern it.<sup>2</sup>

### *The Estimate.*

The estimate embraces the sum of money required to meet future charges and expenses, and also charges and expenses legally incurred within six months next before the rate is made. If the ratepayer asserts that the rate is to be applied to defray charges and expenses incurred previous to the six months next before the making of the rate, his remedy is by appeal.<sup>3</sup> Expenses may be incurred long before a charge is created, *e.g.*, where work is done for the Council under an agreement which limits their liability to pay

<sup>1</sup> *Re Broughton* L.B., 1865, 12 L.T. 310.

<sup>2</sup> *R. v. Belper* L.B., 1889, 46 J.P. 166.

<sup>3</sup> *R. v. Streetfield*, 1863, 11 W.R. 736.

a certain part of the cost each year till the whole claim is paid.<sup>1</sup> The sum raised by a rate is not so exclusively appropriated to the expenses specified in the estimate as the purposes thereof, but that the rate may be applied to debts lawfully incurred, but not included in the estimate.<sup>2</sup> The directions of the Public Health Act, 1875, in regard to the estimate are set out in section 218 :—

“218. Every Urban Authority, before proceeding to make a general district rate or private improvement rate under this Act, shall cause an estimate to be prepared of the money required for the purposes in respect of which the rate is to be made, showing—

“The several sums required for each of such purposes; and

“The rateable value of the property assessable; and

“The amount of rate which for those purposes it is necessary to make on each pound of such value;

and the estimate so made shall forthwith, after being approved of by the Urban Authority, be entered in the rate book, and be kept at their office, open to public inspection during the office hours thereat; but it shall not be deemed part of the rate, nor in any respect affect the validity of the same.”

The rate may be made for a year or any less period.

The estimate is the title of the rate. If it shows that the rate is made for a purpose other than those specified in the Public Health Acts, the rate is bad. The question of concurrence of rates for the same purpose or other illegality should be raised by appealing to Quarter Sessions,<sup>3</sup> but Justices can state a case on a point of law when a summons is heard.

<sup>1</sup> *R. v. Rotherham L.B.*, 1858, 8 E. & B. 906.

<sup>2</sup> *R. v. Read*, 1849, 13 Q.B. 535.

<sup>3</sup> *R. v. Workshop*, 21 J.P. 451; *Sandgate L.B. v. Pledge*, 1885, 14 Q.B.D. 730.

Any person interested in or assessed to the rate may inspect it and the estimate, and may take copies of or extracts therefrom without fee or reward. A penalty of 5*l.* is imposed on those who hinder inspection by a ratepayer (section 219). All rates, except private improvement rates made or collected under the Public Health Act should be published in the same manner as poor rates, by affixing a notice, on the Sunday next after making the rate before the commencement of Divine Service, on or near to the church doors of all the churches and chapels in the district (section 222, Public Health Act, 1875). Rates may be amended from time to time, and where names are not discoverable the description of "owner" or "occupier" suffices. An amended rate is deemed to be made at the time when the ratepayer receives notice of the amendment, and the rate is not payable by him till the expiry of seven days after notice, and he has a right of appeal if this rate is increased. Section 221, enacts—

" 221. An Urban Authority may from time to time amend any rate made in pursuance of this Act, by inserting therein the name of any person claiming and entitled to have his name inserted, or by inserting the name of any person who ought to have been assessed, or by striking out the name of any person who ought not to have been assessed, or by raising or reducing the sum at which any person has been assessed, if it appears to the Urban Authority that he has been under-rated or over-rated, or by making any other alteration which will make the rate conformable to the provisions of this Act ; and no such amendment shall be held to avoid the rate."

Section 211, Public Health Act, 1875, enacts—

“Section 211. With respect to the assessment and levying of General District Rates under this Act, the following provisions shall have effect, namely—

“(1.) General District Rates shall be made and levied on the occupier of all kinds of property for the time being by law assessable to any rate for the relief of the poor, and shall be assessed on the full net annual value of such property, ascertained by the valuation list for the time being in force, or, if there is none, by the rate for the relief of the poor made next before the making of the assessment under this Act, subject to the following exceptions, regulations, and conditions.”

The full net annual value as ascertained by the valuation list for the time being in force; that is, in force either when the rate is made or when it is levied. Hence, if the annual value, according to the valuation list in force, is reduced after the rate is demanded and before the levy or process for recovery thereof, the General District Rate must be proportionately reduced,<sup>1</sup> and a fresh demand made for the reduced sum.<sup>2</sup> This follows the practice in regard to the Poor Rate where the valuation list is amended on appeal, the Assessment Committee notify the Overseers, who alter the then current rate accordingly (27 & 28 Viet. c. 39, section 1). For the purposes of assessment, Officers of the District Council may inspect and take copies of all Poor Rate books (section 212, Public Health Act, 1875).

<sup>1</sup> *Sheffield Waterworks Company v. Mayor of Sheffield*, 1886, 51 L.T. 179.

<sup>2</sup> The right to demand the reduced amount arises when the amended rate is made according to the reduced valuation, and the six months within which the reduced rate is recoverable runs from the demand thereof. *Keeton v. Sheffield Coal Co.*, 1901, 49 W.R. 330.



*Rating Owners.*

The valuation list is conclusive as to value only. Who is the occupier and who is not, is a fact which may be contested when payment is enforced before the Justices, so may the extent of the premises occupied, where separate premises are included in one valuation as being in one occupancy.<sup>1</sup>

"Section 211.—(1.) (a.) The owner, instead of the occupier, may at the option of the Urban Authority be rated in cases—

"Where the rateable value of any premises liable to assessment under this Act does not exceed the sum of ten pounds; or

"Where any premises so liable are let to weekly or monthly tenants; or

"Where any premises so liable are let in separate apartments, or where the rents become payable or are collected at any shorter period than quarterly.

"Provided that in cases where the owner is rated instead of the occupier, he shall be assessed on such reduced estimate as the Urban Authority deem reasonable of the net annual value, not being less than two-thirds nor more than four-fifths of the net annual value; and where such reduced estimate is in respect of tenements whether occupied or unoccupied, then such assessment may be made on one-half of the amount at which such tenements would be liable to be rated if the same were occupied and the rate were levied on the occupiers.

"(b.) The owner of any tithes, or of any tithe commutation rentcharge, or the occupier of any land used as arable, meadow, or pasture ground only, or as woodlands, market gardens, or nursery grounds, and the occupier of any land covered with water, or used only as a canal or towing-path for the same, or as a railway constructed under the powers of any Act of Parliament for public conveyance, shall be assessed in respect of the same in the proportion of one-fourth part only of such net annual value thereof."

<sup>1</sup> *Raglan Bay v. John*, 1895, 72 L.T. 805; *L. & N.W. Ry. v. Buckmaster*, 1874, L.R., 10 Q.B. 70.



*Tithes.*

The Tithe Act, 1836, provides that every rentcharge payable instead of tithes shall be subject to all parochial, county, and other rates, in like manner as the tithes commuted for the rentcharge had been subject. The Tithe Act, 1891, transfers the liability to pay the rentcharges to which it applies from the occupiers to the owners of the lands out of which the rentcharges issue. The rateable value of land is not raised by the transfer of the liability to pay the rentcharge from the occupier to the owner. Under section 15 of the Union Assessment Committee Act, 1862, the gross estimated rental of any hereditament (from which the rateable value is obtained) is defined as the rent at which the hereditaments might reasonably be expected to let from year to year, free of all usual tenants rates and taxes and tithe commutation rentcharge, if any, that is to say, the rent at which it might be expected to let, if the tenant bore these burdens.

“The rentcharge” means tithe rentcharge issuing out of lands, and payable pursuant to the Tithe Act, 1836, and includes any rentcharge into which a corn rent has been converted under the Tithe Act, 1860; but does not include a rentcharge payable under the Extraordinary Tithe Redemption Act, 1886, nor a rentcharge payable under the Tithe Act, 1860, in respect of the tithes on any gated or stinted pasture, nor a sum or rate payable for each head of cattle or

stock turned on land subject to common rights or held or enjoyed in common.

The Tithe Rentcharge (Rates) Act, 1899, 62 & 63 Viet. c. 17, provided that the owner of tithe rentcharge attached to a benefice shall be liable to pay only one-half of the amount of any rate to which the Agricultural Rates Act, 1896, applies, and which is assessed on him as owner of that tithe rent, and the remaining one-half shall be paid by the Commissioners of Inland Revenue, out of the sums payable by them to the Local Taxation Account, on account of the Estate Duty Grant.<sup>1</sup>

The Agricultural Rates Act, 1896, which is to remain in force until the 31st March 1906, and under which the occupiers of agricultural land are only liable to pay one-half of the rate in the pound payable in respect of buildings and other hereditaments, applies to all rates and moneys raised by precept in the first instance, except (*a*) rates which the occupier of agricultural land is liable as compared with the occupier of buildings or other hereditaments to be assessed to or to pay in the proportion of one-half or less than one half, or (*b*) rates which are assessed under any commission of sewers or in respect of any drainage, wall, embankment, or other work for the benefit of the land. Hence the General District Rate is not affected by the Agricultural Rates Act, 1896, and the Tithe Rentcharge (Rates) Act, 1899.

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<sup>1</sup> The Commrs. of I.R. pay into the Local Taxation Account, kept at the Bank of England, the proceeds of duties collected in each county on local taxation licences. — L.G. Act, 1888, sec. 20.

By the Rating of Orchards Act, 1890, the word "orchards" and by the Allotments Rating Act, 1891, the word "allotments" are to be inserted after woodlands in subsection (1) (*b*).

Land covered with water includes artificial reservoirs<sup>1</sup> and filter beds used for water supply, although not always covered with water, and a wet dock; but landing places, sheds, and hoists not being a part of the dock are not rateable on one-fourth their assessable value.<sup>2</sup> However, it seems from the inclusion of towing paths with canals, that it is intended to assess at the lower rate large undertakings as a whole.

Glass houses in a market garden are rateable on the lower scale.<sup>3</sup>

### *Railways.*

The line of rails connecting one place with another, over which goods and passengers are carried with necessary adjuncts to such use, are assessed as the railway on one-fourth value. Adjuncts for other purposes are rated on full value. In *L. & N.W. Ry. v. Llandudno* the line was held to include station roof over it, the roof over platform and covering the sidings, the platform under the roof, and the uncovered platforms. Local business adjuncts being part of the station include cab-stands and drives under covering, and hoists in the goods yards.<sup>4</sup> Goods sheds used to admit trucks for the purpose of loading and unloading

<sup>1</sup> *Hampton U.D.C. v. Southwark W. Co.*, 1900, A.C. 3.

<sup>2</sup> *R. v. Newport Dock*, 1862, 2 B. & S. 708.

<sup>3</sup> *Purser v. Worthing L.B.*, 1887, 18 Q.B.D. 818.

<sup>4</sup> 1897, 1 Q.B. 287.

are rateable on full value.<sup>1</sup> So are cattle lairages, and because the ordinary test of annual value, by comparison with similar premises in the neighbourhood, cannot be applied, and as structural value does not exhaust the profit-earning capacity of the premises, the amount of receipts and expenditure may be considered together with the structural value and other circumstances of the case, in order to fix the gross estimated rental at which the premises should be assessed.<sup>2</sup>

“(c.) If within any Urban District or part of such district any kind of property is exempted from rating by any local Act in respect of all or any of the purposes for which General District rates may be made under this Act, the same kind of property shall, in respect of the same purposes, and to the same extent within the parts to which the exemption applies (but not further or otherwise), be exempt from assessment to any General District Rates under this Act unless the Local Government Board by Provisional Order otherwise direct.”

Exempt property includes such as has never been subject to assessment and is intended to continue free from liability.<sup>3</sup> This exemption relates to the nature of the property, not to exemption under a local Act by reason merely of locality ; local metes and bounds being defined for the purpose of ascertaining liability.<sup>4</sup> Limits to the amount of any rate imposed by local Acts do not apply to the General District Rate.<sup>5</sup>

<sup>1</sup> *Williams v. L. & N.W. Ry.*, 1900, 1 Q.B. 761.

<sup>2</sup> *Mersey Docks v. Birkenhead Ass. Comm.*, 1900, 1 Q.B. 143.

<sup>3</sup> *R. v. E. L. Wks. Co.*, 1860, 24 J.P. 454.

<sup>4</sup> *Chelmsford Gdns. v. C.L.B.*, 1853, 2 E. & B. 500, N. ; *Pontey v. Plymouth L.B.*, 1858, E.B. & E. 691.

<sup>5</sup> *Commrs. of Walton v. Walford*, 1875, L.R. 10 Q.B. 100.

Nor is an exemption under a local Act of assessment on value defeated by the removal of any restriction on the amount of the General District Rate.

*Incoming and Outgoing Occupiers.*

Subsections (2) and (3) of section 211 provides for proportionate payment of rates in cases of change of occupancy during the currency of a rate. Subsection (2) applies where owners are rated except where rated for void premises on one half their rateable value.<sup>2</sup>

“(2.) If at any time of making any General District Rate any premises in respect of which the rate may be made are unoccupied, such premises shall be included in the rate, but the rate shall not be charged on any person in respect of the same while they continue to be unoccupied; and if any such premises are afterwards occupied during any part of the period for which the rate was made and before the same has been fully paid, the name of the incoming tenant shall be inserted in the rate, and thereupon so much of the rate as at the commencement of his tenancy may be in proportion to the remainder of the said period shall be collected, recovered, and paid in the same manner in all respects as if the premises had been occupied at the time when the rate was made.

“(3.) If any owner or occupier assessed or liable to any such rate ceases to be owner or occupier of the premises in respect whereof he is so assessed or liable, before the end of the period for which the rate was made, and before the same is fully paid off, he shall be liable to pay only such part of the rate as may be in proportion to the time during which he continues to be such owner or occupier; and in every such case if any person afterwards become owner or occupier of the premises during part of the said period, he shall pay such part

<sup>1</sup> Bingley U.D.C. v. M.R. Coy., 1899, 80 L.T. 723.

<sup>2</sup> R. v. Barclay, 1881, 8 Q.B.D. 306, 486.

of the rate as may be in proportion to the time during which he continues to be such owner or occupier, and the same shall be recovered from him in the same manner as if he had been originally assessed or liable."

The division of an Urban District for any purpose of the Public Health Acts with regard to the assessment and levy of General District Rate.

"(4.) The Urban Authority may divide their district or any street therein into parts for all or any of the purposes of this Act, and from time to time abolish or alter any such divisions, and may make a separate assessment on any such part for all or any of the purposes for which the same is formed; and every such part, so far as relates to the purposes in respect of which such separate assessment is made, shall be exempt from any other assessment under this Act: Provided that if any expenses are incurred or to be incurred in respect of two or more parts in common the same shall be apportioned between them in a fair and equitable manner."

Where money is borrowed for the purpose of defraying expenses in respect of which the District Council have determined a part only of the Urban District to be liable it is their duty to make good so far as can be, the money borrowed out of a rate levied in such part of the district (section 234); but the loan is charged on the rates of the whole district.

Where a General District Rate includes expenses incurred on the construction of new sewers a deduction may be made in favour of the occupiers of premises which have been otherwise effectually drained (section 224, P.H. Act, 1875); and the Council may direct rates to be reduced or remitted on account of the poverty of the persons rated (*Ib.*, section 225).

## GENERAL EXPENSES IN RURAL DISTRICTS.

*Special Expenses—The Contributory Place—Special Drainage District—Highway Expenses—Local Government Act, 1894, section 25—Public Health Act, 1875, sections 144–148—Repairs by Tenure—Main Roads—Contribution by County Councils—Recovery of Arrears—Public Health Act, 1875, section 229.*

Each of the component parishes of the Rural District are chargeable with the expenses incurred by the District Council about its own sewerage and water supply. The general expenses of the Rural District include establishment charges and salaries of officers and highway expenses. Under the Public Health Act, 1875, the Local Government Board are empowered to declare any expenses incurred in or payable in respect of any parish to be raised as special expenses, and the Public Health Acts Amendment Act, 1890, section 49, empowers the Board to declare any expenses incurred by a Rural Council to be special expenses, whether incurred on behalf of the whole district or of a parish. Each parish is styled a contributory place, in “respect of which the District Council issue separate precepts to the Overseers authorising them to raise such contributions towards the common fund of the district as is charged on that area.” The Rural Council can, with



the approval of the Local Government Board, constitute any part of a parish therein a "special drainage district" for the purpose of charging thereon exclusively the expenses of works of sewerage, water supply, or other works authorised to be charged as special expenses, then such area becomes a separate contributory place (section 277, P.H. Act, 1875).

The expenses of a Rural District Council as Sanitary Authority and Surveyor of Highways, and the mode of raising rates to defray them are dealt with by sections 229 and 230, Public Health Act, 1875, and section 29, Local Government Act, 1894, which provides as follows, with reference to highway expenses in Rural Districts:--

"(a.) Any highway expenses shall be defrayed as general expenses :

"(b.) When the Local Government Board determine any expenses under this Act to be special expenses and a separate charge on any contributory place, and such expenses would if not separately chargeable on a contributory place be raised as general expenses, they may further direct that such special expenses shall be raised in like manner as general expenses, and not by such separate rate for special expenses as is mentioned in section 230 of the Public Health Act, 1875 :

"(c.) A District Council shall have the same power of charging highway expenses under exceptional circumstances on a contributory place as a Highway Board has in respect of any area under section 7 of the Highways and Locomotives (Amendment) Act, 1878 :

"(d.) Where highway expenses would, if this Act had not passed, have been in whole or in part defrayed in any parish or other area out of any property or funds other than rates,



the District Council shall make such provision as will give to that parish or area the benefit of such property or funds by way of reduction of the rates of the parish or area."

Where a District Council resolve to charge highway expenses on a parish they are raised as general expenses, but the Local Government Board can, by Order, pursuant to section 49, Public Health Acts Amendment Act, 1890, direct such expenses to be special expenses. Section 7 of the Highways and Locomotives (Amendment) Act, 1878, provides that "if a Highway Board think it just, by reason of natural differences of soil or locality, or other exceptional circumstances, that any parish or parishes within their district should bear the expenses of maintaining its or their own highways, they may (with the approval of the County Council of the county or counties within which their district, or any part thereof, is situate) divide their district into two or more parts, and charge exclusively on each of such parts the expenses payable by such Highway Board in respect of maintaining and keeping in repair the highways situate in each such part; so, nevertheless, that each such part shall consist of one or more highway parish or highway parishes."

Subsection (*d*) will secure to each parish in the Rural District the whole benefit derived from highway charities and other property directed by an Inclosure or other Act to be devoted to the maintenance of highways, *e.g.*, pasturage rents.

The Rural District Council are invested with highway powers by section 25, Local Government Act, 1894, which provides that--

“Rural District Councils shall be the successors of the Rural Sanitary Authority and Highway Authority, and shall also have as respects highways all the powers, duties, and liabilities of an Urban Sanitary Authority under sections one hundred and forty-four to one hundred and forty-eight of the Public Health Act, 1875, and those sections shall apply in the case of a Rural District and of the Council thereof in like manner as in the case of an Urban District and an Urban Authority.”

Sections 144 to 148, which are set out at pages 188, 195, create the District Councils surveyors of highways under the Highways Acts, and confer on them the powers given by those Acts to the inhabitants in vestry assembled, and enable the District Council to enter into agreements with any person for the making of new public roads within their district, or to construct and maintain public bridges over railways, canals, or tramways, or to agree to maintain, repair, and cleanse any street or road which any person is liable to repair, or to repair any road over a county bridge.

Subsection 2 of section 25 provides—

“(2.) Where a highway repairable *ratione tenuræ* appears on the report of a competent surveyor not to be in proper repair, and the person liable to repair the same fails when requested so to do by the District Council to place it in proper repair, the District Council may place the highway in proper repair, and recover from the person liable to repair the highway the necessary expenses of so doing.”

Ratione tenuræ, *i.e.*, by reason of tenure contrasted with liability to repair which ordinarily lies upon the inhabitants at large. The occupier of the land subject to this burden is the person responsible.<sup>1</sup>

"(3.) Where a Highway Authority receives any contribution from the County Council towards the cost of any highway under section eleven, subsection (10) of the Local Government Act, 1888, such contribution may be made, subject to any such conditions for the proper maintenance and repair of such highways, as may be agreed on between the County Council and the Highway Authority."

The contribution under subsection (10) which may be made by the County Council towards the cost of repair, maintenance, enlargement, and improvement of any highway or public footpath in the county, is voluntary.

Subsection (4) of section 11, L.G. Act, 1888, empowers the County Council and any District Council to contract for the undertaking by the District Council of the maintenance, repair, improvement, and enlargement of, and other dealing with any main road, such undertaking being in consideration of an annual payment as agreed upon, and for such a purpose the District Council have the same powers and are subject to the same duties and liabilities as if the main road were a road vested in them. Such contracts may be for a term of years. The County Council may require a District Council to undertake the repair and control of main roads, and any difference about the amount

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<sup>1</sup> Cuckfield R.D.O. v. Goring, 1 Q.B. 865.

of the annual payment is referable to the Local Government Board as arbitrators or otherwise.

The contribution made by the County Council covers the whole expenditure incurred by the District Council on main roads to which the agreement relates<sup>1</sup> The County Council are not empowered to make any payment towards such undertakings until they are satisfied by the report of their Surveyor that the main road has been properly maintained and repaired, and other works properly executed. If the County Council refuse to make the annual payment agreed on, or if any difference arises about the state of repair the matter may be referred to the Local Government Board. Arrears should be promptly recovered. The amount recoverable by action is limited to the amount for which the county rate might have been made at the date of action brought.<sup>2</sup>

#### Section 229, Public Health Act, 1875—

“229. The expenses incurred by a Rural Authority in the execution of this Act shall be divided into general expenses and special expenses.

“General expenses (other than those chargeable on owners and occupiers under this Act) shall be the expenses of the establishment and officers of the Rural Authority, the expenses in relation to disinfection, the providing conveyance for infected persons, and all other expenses not determined by this Act or by order of the Local Government Board to be special expenses.

<sup>1</sup> The agreement requires a 10s. stamp, *Cumberland C.C. v. L.R.*, 1898, 78 L.T. 679.

<sup>2</sup> *Thetford v. Norfolk C.C.*, 1898, 2 Q.B. 468. The same rule applies where an Urban Council have elected to retain main roads pursuant to subsec. (2).

“Special expenses shall be the expenses of the construction, maintenance, and cleansing of sewers in any contributory place within the district, the providing a supply of water to any such place and maintaining any necessary works for that purpose, if and so far as the expenses of such supply and works are not defrayed out of water rates or rents under this Act, the charges and expenses arising out of or incidental to the possession of property transferred to the Rural Authority in trust for any contributory place, and all other expenses incurred or payable by the Rural Authority in or in respect of any contributory place within the district, and determined by order of the Local Government Board to be special expenses.

“Where the Rural Authority make any sewers or provide any water supply or execute any other work under this Act for the common benefit of any two or more contributory places within their district, they may apportion the expense of constructing any such work, and of maintaining the same, in such proportion as they think just between such contributory places, and any expense so apportioned to any such contributory place shall be deemed to be special expenses legally incurred in respect of such contributory place.

“The overseers of any contributory place, if aggrieved by any such apportionment, may, within twenty-one days after notice has been given to them of the apportionment, send or deliver a memorial to the Local Government Board stating their ground of complaint, and the said board may make such order in the matter as to it may seem equitable, and the order so made shall be binding and conclusive on all parties concerned.

“General expenses shall be payable out of a common fund to be raised out of the poor rate of the parishes in the district according to the rateable value of each contributory place in manner in this Act mentioned.

“Special expenses shall be a separate charge on each contributory place.

"The following areas situated in a Rural District shall be contributory places for the purposes of this Act; that is to say,

- "(1) Every parish not having any part of its area within the limits of a special drainage district formed in pursuance of the Sanitary Acts or of this Act, or of an Urban District; and
- "(2) Every such special drainage district as aforesaid; and
- "(3) In the case of a parish wholly situated in a Rural District and part of which forms or is part of any such special drainage district as aforesaid, such portion of that parish as is not comprised within such special drainage district; and
- "(4) In the case of a parish, a part of which is situated within an Urban District, such portion of that parish as is not comprised within such Urban District or within any such special drainage district as aforesaid."

An order of the Local Government Board cannot be reviewed by the High Court, but it is not conclusive as to facts to which it relates, for instance, if the Board confer on the Rural Council urban powers for the purpose of charging the repairs of a private road on the frontagers, that does not defeat the right of a frontager to contest that the road in question is a highway repairable by the public at large, and that consequently the cost of repair cannot be raised as special expenses.<sup>1</sup>

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<sup>1</sup> *Fenwick v. Croydon R.S.A.*, 1891, 2 Q.B. 210.

## ACCOUNTS.

*The Annual Return—The Financial Statement—  
The Audit—Taxation by Clerk of the Peace.*

Pursuant to the District Auditors Act, 1879, a duplicate of the financial statement, in the prescribed form, is sent to the Local Government Board. This is in substitution for the annual report, directed to be sent by section 206, Public Health Act, 1875, of all works executed and of all sums received and disbursements made by District Councils under the Public Health Acts, and dispenses with the annual return unless the Board require it. The Board have also issued forms of financial statements for Joint Committees.

The accounts of Hospital Committees under the Isolation Hospitals Act, 1893, are audited pursuant to section 247.

The 14 days' public notice of the audit is reckoned exclusively of the day of publication and the day of audit. An extraordinary audit of the accounts of the Council or of any officer,<sup>1</sup> whether still holding office or upon his resignation or removal from office, may be held after three days' public notice thereof (29 & 30 Vict. c. 113. s. 6).

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<sup>1</sup> Where officers omit to collect money which it is their duty to collect, they may be surcharged under sec. 247. *R. v. Roberts*, 1901, 49 W.R. 488.

Appeals against surecharges are regulated by section 4 of the Poor Law Amendment Act, 1848 :—

“Where any appeal shall be made to the Local Government Board against any allowance, disallowance, or surcharge made by any Auditor in the accounts of any District Council or their officers, it shall be lawful for the said Board to decide the same according to the merits of the case; and if they shall find that any disallowance or surcharge shall have been or shall be lawfully made, but that the subject-matter thereof was incurred under such circumstances as make it fair and equitable that the disallowance or surcharge should be remitted, they may direct that the same shall be remitted upon payment of the costs, if any, which may have been incurred by the Auditor or competent Authority in the enforcing of such disallowance or surcharge.”

Joint surcharges may be remitted in favour of one person without discharging the other (39 & 40 Vict. c. 61. s. 38).

The Local Authorities (Expenses) Act, 1887, empowers the Local Government Board to sanction payments out of local rates; then such payments cannot be disallowed by the Auditor. Where the legality of expenditure is doubted, a Local Authority should obtain the sanction of the Board. Questions of legality of expenditure which affect all District Councils are at times referred to in opinions of the Board issued for the guidance of Auditors. Expenditure in the purchase of periodical publications is an instance.

The Board consider that publications containing information so immediately connected with the dis-



charge of the duties of District Councils as to enable them to discharge those duties with advantage to the ratepayers, may be bought at the cost of the rates ; the Auditor, subject to appeal, to decide in regard to any particular publication, and what number of copies may be purchased (Memorandum, 16 June 1884). The High Court cannot interfere with the discretion of the Auditor. Cab-hire of Councillors to the Town Hall was paid and disallowed by the Auditor, but where a Committee travel to view works the Auditor can pass the hire of conveyances.<sup>1</sup>

The following instructions of the Board regulate the practice followed in appeals against disallowances and surcharges :—

- “ 1. A person aggrieved who decides to appeal, must, unless the Auditor has already entered his reasons in the book of account in which the disallowance or surcharge was made, apply to the Auditor to enter his reasons in that book, and for this purpose the book should be submitted to the Auditor.
- “ 2. When the Auditor has entered his reasons, an exact copy of them, and also a copy of the Auditor's certificate, including his signature and the date of the certificate, should be forwarded to the Board with the appeal.
- “ 3. The appeal should be by letter (on foolscap paper) addressed to the Secretary of the Local Government Board, Whitehall, London, and must be signed by the Appellant in his own handwriting. Where two or more persons are mentioned in the Auditor's certificate, the appeal must be signed by each of those who appeal.

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<sup>1</sup> R. v. Plumstead, “The Times,” 2 June 1870.

- "4. The appeal should contain a full statement of the facts which the Appellant desires to lay before the Board, and the grounds upon which the appeal is made, should be explicitly set out. If there are any cheques, bills, vouchers, or other papers or documents bearing upon the matter, they should be forwarded to the Board with the appeal; and where there are resolutions of the Local Authority with reference to the subject matter of the expenditure, copies of the resolutions should be sent."

Items duly certified at a previous audit cannot be re investigated.<sup>1</sup>

Expenditure is contrary to law where made for a purpose not authorised by the Public Health Act. Non-compliance with statutory directions about the formality of contracts does not constitute a misapplication, and the Council where they have omitted to seal a contract, cannot be stopped from paying a debt due under it.<sup>2</sup> But money spent for purpose of patronage, or by arrangement to obtain a decision on a test case to settle a legal point, will be surcharged, or the High Court will grant an injunction to stop the proposed payment.<sup>3</sup>

Where it is intended to surcharge a person who is not present at the audit, the Auditor notifies him, and adjourns the audit for a sufficient time to allow of his appearance (11 & 12 Vict. c. 91. s. 8). Summary proceedings for the recovery of amounts surcharged

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<sup>1</sup> R. v. Chiddingstone, 1869, 2 B. & S. 294.

<sup>2</sup> R. v. M. of Norwich, 1882, 30 W.R. 752.

<sup>3</sup> A.G. v. Cumberwell, 1894, 71 L.T. 478.

must be commenced within nine months after the date of the surcharge or determination of an appeal (12 & 13 Vict. c. 103, s. 9).

The Auditor's certificate cannot be questioned by the Justices<sup>1</sup>; but payment to the Treasurer of the amount surcharged may be proved if proceedings are taken.<sup>2</sup> The payment of the sum certified with costs of the proceedings for the recovery thereof, is enforced as if it were a poor rate, *i.e.*, by distress and imprisonment (47 & 48 Vict. c. 43, s. 11).

Surcharges are not often removed into the High Court to be discharged. The Poor Law Act, 1844 (7 & 8 Vict. c. 101, s. 35), provides that the party must first pay the sum surcharged to the Treasurer, then enter into a recognizance to sue out the writ of certiorari without delay, and to pay the full costs and charges of the Auditor if the surcharge is confirmed. In *Q. v. Hunt*<sup>3</sup> it was held that a solicitor could only review the Auditor's disallowances where his costs had previously been submitted to the Clerk of the Peace for taxation. It is, however, doubtful whether this applies to taxation pursuant to section 249, Public Health Act, which is as follows :—

"249. On the application of a District Council to the Clerk of the Peace of the county in which the district of such Authority is wholly or in part situated, the said clerk or his deputy shall tax any bill due to any solicitor in respect of legal business performed on behalf of such Authority; and the

<sup>1</sup> *R. v. Fordham*, L.R., 1873, 8 Q.B. 501.

<sup>2</sup> *Prest v. Royston*, 1876, 33 L.T. 561.

<sup>3</sup> 1856, 6 E. & B. 408.

allowance of any sum on such taxation shall be *primâ facie* evidence of the reasonableness of the amount, but not of the legality of the charge.

"The Clerk of the Peace shall be allowed for such taxation a remuneration after the rate to be fixed by the Master of the Crown Office, and declared by an Order of the Local Government Board.

"If any such bill is not taxed by the Clerk of the Peace or some other duly authorised Taxing Officer before being presented to the Auditors or Auditor, the decision of the Auditors or Auditor upon the reasonableness and the legality of the charge shall be final."

The taxation by the Clerk of the Peace is conclusive as between the District Council and the ratepayers, but disallowances in such taxation do not affect the right of the solicitor to recover his costs against the District Council, and it is not obligatory on him to wait for the annual audit before suing them. He can go to taxation as between solicitor and client under section 37, Attorneys Act, 1843.<sup>1</sup> In like manner, a bill of costs is subject to taxation by a Master at the instance of the District Council.<sup>2</sup>

The Clerk of the Peace is allowed after the rate of 4*d.* a folio of 72 words for the taxation of a solicitor's bill of costs for legal business done for a District Council (London Gazette, 24th April 1877).

Misapprehension prevails about the function of the auditor of the accounts of Local Authorities. Audits may be for the mutual convenience of parties or adverse, to adjust conflicting interests. The district

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<sup>1</sup> *Gds. of Southampton v. Bell*, 1888, 21 Q.B.D. 300.

<sup>2</sup> *Blake v. Croydon R.S.A.*, 1880, 9 T.L.R. 336.

auditor's duty is adverse ; he is on the watch for misapplications, and is ever ready to track out commissions and frauds ; his duty as stated by subsection 7 of section 247, Public Health Act, is to disallow every item of account contrary to law. His duty is not limited to ascertaining whether there are vouchers for each item of the accounts, but embraces an investigation to enable him to certify that the payments represented by the vouchers are authorised or unauthorised, or otherwise illegal.<sup>1</sup>

The general district rate or general expenses rate is chargeable with the cost of administering the statutory powers with which District Councils are invested, hence it follows that there is a misapplication of the ratepayers' money, where it has been expended otherwise than for carrying the powers conferred by the Public Health Acts into execution.

With this rule in view every question of surcharge should be tested. To constitute a misapplication of money it is not necessary that there should be any intention to act illegally. Any payment not warranted by statutory powers is illegal. A misappropriation of one fund in place of another would warrant a surcharge, thus where private street expenses have been incurred pursuant to section 150, Public Health Act, 1875, it is illegal to defray them out of the general district rate, although it may be that before

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<sup>1</sup> Thomas v. Devonport Corporation, 1900, 1 Q.B. 17.

notices are served under that section the council might have repaired the street at the charge of the ratepayers.<sup>1</sup>

Section 210, Public Health Act, 1875, declares that the general district rate may be charged with the payment of future charges or expenses or retrospectively in order to raise money for the payment of charges and expenses incurred at any time within six months before the making of the rate. The expenditure charged on the rate must not only be incurred pursuant to the Act, but also within the period of six months before the rate is made which is to be levied on the ratepayers. If money is due from the Council they must make a rate to pay it within six months after the debt is incurred, or they cannot legally pay it with the ratepayers' money. Just claims often tempt Councils to overlook this rule, but adherence to it is necessary for the protection of the ratepayers, otherwise a creditor with a questionable claim, which is likely to be contested, can postpone his demand till his friends are in office, then get his bill passed without demur. But when a particular expense is "incurred" is not always easy to say. If the sum due is ascertained, the liability to pay is incurred, but where amounts are contested it may be the sum due is not ascertained till judgment is obtained.

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<sup>1</sup> Dryden v. Overseers of Putney, 1876, 1 Ex.D. 223.

## CONTRACTS.

*Under Seal if over £50—Tenders—  
Advertisements—Sureties.*

Local Authorities are invested with such powers as are mentioned in the Public Health Act, 1875, and Acts amending it, and by section 173 they may enter into any contracts necessary for carrying those powers into execution.

Statutory provisions relating to the formalities to be observed in the mode of contracting by Urban District Councils are set out in section 174, Public Health Act, 1875. Those provisions do not touch the contracts of Rural District Councils, hence the contracts of these corporate bodies are regulated by the general rule of law applicable to contracts of Corporations. The rule is that such contracts must be under the Common Seal of the Corporation because thereby only can they express their consent as a corporate body.

To this rule an exception is established in favour of contracts relating to everyday affairs, where to hold the rule applicable would occasion very great inconvenience or tend to defeat the very object for which a Corporation is created; hence the engagement of a workman, the doing of acts constantly recurring and of small importance do not require to be under seal.<sup>1</sup> But it behoves those who contract

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<sup>1</sup> Church v. Impl. Gas Co., 1838, 6 A. & E. p. 861; M. of Ludlow v. Charlton, 1840, 6 M. & W. p. 822.

with Local Authorities to bear in mind that interests created by statute can only be bound in pursuance of the same.

Contracts are void if the corporate body can under no circumstances apply the ratepayers money to pay<sup>1</sup>; nor are corporate bodies like ordinary individuals prejudiced by conduct which operates by estoppel or acquiescence.<sup>2</sup>

The following statutory provisions are to be observed in making contracts by Urban District Councils :—

“(1.) Every contract made by an Urban Authority whereof the value or amount exceeds fifty pounds shall be in writing and sealed with the common seal of such authority.”

The seal is necessary to authenticate the concurrence of the whole body corporate.<sup>3</sup> Amount is stated on the face of a contract; the sum for which anyone contracts to do work. Value is that which will have to be paid out of the rates if the contract is carried out. A contract is the act of both the parties to it, and the statute applies to both of them. The subsection requires that the evidence of the obligation of both parties must be in writing and sealed with their seals.<sup>4</sup> A local Authority is not bound to avail itself of the defence of want of seal, and such a defence is only open to the Council itself; and does

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<sup>1</sup> *A.G. v. M. of Newcastle*, 1889, 23 Q.B.D. 492.

<sup>2</sup> *V. of Islington v. Hornsey*, 1900, 1 Ch. 695.

<sup>3</sup> *M. of Ludlow v. Charlton*, 1840, 6 M. & W. 823.

<sup>4</sup> *Young v. M. of Leamington*, 1883, 8 A.C. 517.



not affect the liabilities of ratepayers to the Council in respect of expenditure made pursuant to informal contracts.<sup>1</sup> Execution of works under an unsealed contract does not oblige the Council to pay, the ratepayers enjoy the benefit but they are not a party to the contract.<sup>2</sup> A contract may be sealed when part performed, the work being for the benefit of the ratepayers.<sup>3</sup>

An agreement relating to the settlement of an action about an encroachment on a street, that the Defendant should pay the costs of the Council, which exceeded 50*l.*, and give an undertaking to remove the obstruction is not a contract necessary for carrying the Public Health Act into execution so as to be required to be under seal, and, therefore, though unsealed, may be enforced.<sup>4</sup> And where the value of a contract does not necessarily exceed 50*l.* at the time of contracting, it is not one whereof the value exceeds 50*l.* within section 174.<sup>5</sup> Appointment of a Medical Officer and retainer of a solicitor should be under seal.<sup>6</sup>

Variation of work done under a contract under seal covered by a clause giving power to an engineer to order them may be verbal, and a verbal settlement of a dispute about the contract is valid.<sup>7</sup>

“(2.) Every such contract shall specify the work, materials, matters, or things to be furnished had or done, the

<sup>1</sup> *M. of Bournemouth v. Watts*, 1881, 14 Q.B.D. 87.

<sup>2</sup> *Hunt v. Wimbledon*, 1878, 4 C.P.D. 48.

<sup>3</sup> *Mells v. Shirley L.B.*, 1884, 14 Q.B.D. 911.

<sup>4</sup> *A.G. v. Gaskell*, 1882, 22 Ch.D. 537.

<sup>5</sup> *Eaton v. Barker*, 1881, 7 Q.B.D. 529.

<sup>6</sup> *Dyte v. St. Pancras*, 1872, 27 L.T. 342; *Phelps v. Upton H.B.*, 1885, 49 J.P. 408.

<sup>7</sup> *William v. Barmouth U.D.C.*, 1897, 77 L.T. 383.

price to be paid, and the time or times within which the contract is to be performed, and shall specify some pecuniary penalty to be paid in case the terms of the contract are not duly performed."

Where work had been done by a contractor under a contract which did not specify any penalty in case of non-performance, it was held, in first instance, to be unenforceable<sup>1</sup>; but this decision might not be supported in a Court of Appeal, and the Court suggested a fresh contract with a penalty clause, and desired that the Local Government Board should sanction payment.

"(3.) Before contracting for the execution of any works under the provisions of this Act, an Urban Authority shall obtain from their Surveyor an estimate in writing, as well of the probable expense of executing the work in a substantial manner as of the annual expense of repairing the same; also a report as to the most advantageous mode of contracting, that is to say, whether by contracting only for the execution of the work, or for executing and also maintaining the same in repair during a term of years or otherwise."

An estimate and report from the surveyor are not conditions precedent to the validity of a contract, such directions relating only to the Council itself."

"(4.) Before any contract of the value or amount of one hundred pounds or upwards is entered into by an Urban Authority, ten days public notice at the least shall be given, expressing the nature and purpose thereof and inviting tenders for the execu-

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<sup>1</sup> *British Wire Co. v. Prescott* U.D.C., 1895, 2 Q.B. 463.

<sup>2</sup> *Young v. M. of Leamington*, 1883, 8 A.C. 517.

tion of the same ; and such Authority shall require and take sufficient security for the due performance of the same."

An advertisement for tenders for works according to plans and estimate do not operate as an undertaking that the works can be successfully executed.<sup>1</sup> The submission of a price list does not operate as a tender, but an offer to supply for a period as orders are given operates, if accepted and acted on, as a contract. The advertisement for tenders should state that contracts with the Council must be under seal and performance secured by sureties, so that acceptance by the Council may impose no new conditions which may warrant the withdrawal of a tender.<sup>2</sup>

If a contractor agrees to accept payment for works done for the Council when the owners, who are liable, pay there is an implied condition that the Council will give all necessary notices, so that the money can be in due course collected.<sup>3</sup>

"(5.) Every contract entered into by an Urban Authority in conformity with the provisions of this section, and duly executed by the other parties thereto, shall be binding on the Authority by whom the same is executed and their successors and on all other parties thereto, and their executors, administrators, successors, or assigns, to all intents and purposes: Provided that an Urban Authority may compound with any contractor or other person in respect of any penalty incurred by reason of the

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<sup>1</sup> *Thorn v. M. of L.*, 1876, 1 A.C. 120.

<sup>2</sup> *Harvey v. Barnard's Inn*, 1881, 45 L.T. 280.

<sup>3</sup> *Northington v. Sudlow*, 1862, 2 B. & S. 503.

non-performance of any contract entered into as aforesaid, whether such penalty is mentioned in any such contract, or in any bond or otherwise, for such sums of money or other recompense as to such Authority may seem proper."

Non-compliance with section 174 does not amount to a misapplication so as to warrant a surcharge, and a resolution of the Council to pay for work done under an informal contract will not be set aside by the High Court.<sup>1</sup>

### STAMPS.

*Annual Payments — Receipts — Payments to the Treasurer — Securities — Corporation Duty — Loan Capital.*

The question, stamp or no stamp, and if a stamp, of what amount, is to be determined upon the real character and true meaning of the writing.<sup>2</sup> Where an instrument is stamped for its leading and principal object, everything accessory to that object is covered.

The language used by the parties to an agreement is not conclusive ; how they describe the instrument is immaterial ; their belief that its effect is to create a security mentioned in the Stamp Act, 1891, may be neglected.<sup>3</sup> Taxing Acts are construed like other Acts to carry out the intention of the Legislature as it is expressed in the language employed, having

<sup>1</sup> R. v. Mayor of Norwich, 1882, 30 W.R. 752 ; R. v. Prest, 1850, 16 Q.B. 32.

<sup>2</sup> Rex. v. Inhabitants of Ridgwell, 1827, 6 B. & C. 665.

<sup>3</sup> Limer Asphalt Co. v. Commrs. L.R. 1872, 1 L.R., 7 Ex. 215.

regard to the context with which it is employed.<sup>1</sup> If words have a double meaning they are construed against the Crown. The imposition of a charge on the subject cannot depend upon conjecture. The use of an instrument which is not subject to stamp duty is not an evasion of an obligation ; the Act does not reach the transaction, that is all.

The Commissioners of Inland Revenue are ever striving to apply words with their most onerous meaning, hence the aim of every solicitor is to drive coach and horses through Taxing Acts. Of evils choose the less ; in drawing instruments the quantum of the stamp duty applicable to it should not be lost sight of. The object desired may be effectuated in more than one form of instrument, thus a covenant to pay the whole sum secured in one amount is charged with duty under the head of "mortgage," whereas if the whole sum is payable by instalments, it is charged under the head of "bond, covenant, or instrument," and the stamp varies with reference to the period over which the instalments are payable, and whether for a definite or indefinite period. Bonds securing annual payments are charged with an *ad valorem* duty of two shillings and sixpence for every 100*l.* of the whole sum secured ; thus an instrument securing the payment of 5,000*l.* at the end of a year must bear a stamp of 6*l.* 5*s.*, although the sum is to be paid by weekly instalments. If the instrument merely secured the fixed sum paid in each week, or other

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<sup>1</sup> *N.G. v. Carlton Bank*, 1899, 2 Q.B., p. 164, per Lord Russell of Killowen.

stated period less than a year, for an indefinite period, with provision for its determination by either party, then the sum chargeable with duty would be the weekly payment,<sup>1</sup> but an agreement to pay annual rent by quarterly instalments to a company for a licence to place machines on a platform is a security for an annuity, and chargeable on the whole sum.<sup>2</sup>

Contracts with an insurance company to indemnify employers against claims for compensation for which they may become liable under the Employers Liability Act, 1880, and the Workmen's Compensation Act, 1897, or by the common law, are not policies of insurance against accident, and are not chargeable with stamp duty as such. They are chargeable as agreements or as deeds if under seal.<sup>3</sup>

Receipts given for money deposited in any bank or with any banker, to be accounted for and expressed to be received of the person to whom the same is to be accounted for, are exempt from stamp duty (Stamp Act, 1891, s. 100). If the Treasurer of the District Council is a banker, the acquittances of the Officers who deposit money with him require no stamp, but in any other case it seems that if there is a writing whereby any money is acknowledged or expressed to have been received, the person who gives the receipt for two pounds or upwards is liable to a penalty imposed by section 183, Stamp Act, 1891, if he does

<sup>1</sup> *Clifford v. Commsrs. of I.R.*, 1896, 45 W.R. 14.

<sup>2</sup> *Automatic Sweetmeat Co. v. Commsrs.*, 1894, 1 Q.B. 487.

<sup>3</sup> *Lane's Ince. Co. v. I.R.*, 1899, 1 Q.B. 373.

not stamp it. In *A.G. v. Carlton*,<sup>1</sup> the initialling of entries in an account book of a servant of a bank who paid sums over to the cashier, was held to be a receipt within the Stamp Act, 1891, although the transaction passed between fellow servants of the banking company. The comprehensive interpretation of receipt in the Stamp Act catches any document which is not expressly exempted.

The decision in *National Telephone Co. v. I.R.*,<sup>2</sup> on the meaning of security, has a wide scope. An agreement, not under seal, to pay an annual sum for the hire of a private wire between premises and the local exchange system of a telephone company was held to be chargeable as a bond and not merely as an agreement. *Jones v. I.R. Commissioners*<sup>3</sup> was followed. "Security" includes the instrument which creates the original liability, it is not restricted to something auxiliary to a prior obligation. Thus, security embraces a covenant or instrument of any kind whatsoever which create an obligation to pay periodical sums; all hirings of chattels in consideration of a yearly payment. Akin to this subject is the practice which prevails in the Courts of allowing unstamped instruments to be used on the undertaking of a solicitor to get them duly stamped. It is the duty of the Judge to notice the insufficiency of stamp duty on instruments used in civil court. The solicitor who gives the undertaking is personally responsible for the penalty imposed by the Stamp Act.<sup>3</sup>

<sup>1</sup> 1899, 2 Q.B. 158.

<sup>2</sup> 1895, 1 Q.B. 481.

<sup>3</sup> See Stamp Act, 1891, sec. 11, *In re Coolgardie Gold Fields*, 1900 43 W.R. 461.



The Finance Act, 1895, section 12, relates to the stamp duty on property vested under the Act or purchased under statutory powers :—

“Section 12. Where, after the passing of this Act, by virtue of any Act whether passed before or after this Act—

“(a.) any property is vested by way of sale in any person ; or

“(b.) any person is authorised to purchase property, such person shall, within three months after the passing of the Act, or the date of vesting, whichever is later, or after the completion of the purchase, as the case may be, produce to the Commissioners of Inland Revenue a copy of the Act, printed by the Queen’s printer of Acts of Parliament, or some instrument relating to the vesting in the first case, and an instrument of conveyance of the property in the other case, duly stamped with the *ad valorem* duty payable upon a conveyance of sale of the property ; and, in default of such production, the duty, with interest thereon at the rate of five per cent. per annum, from the passing of the Act, date of vesting or completion of the purchase, as the case may be, shall be a debt to Her Majesty from such person.”

The duty is charged on the consideration paid for the whole undertaking. The purchasers of water-works, for instance, are not entitled to treat the amount paid for the purchase of the land as the consideration, and to take a receipt for the sum paid for the chattels which lie in delivery.

The property of District Councils is exempt from Succession Duty of 5 per cent. imposed by the Customs and Inland Revenue Act, 1885, being appropriated, and the profits thereof applied for the benefit of the inhabitants of the district.

The Finance Act, 1899, imposes on Local Authorities the obligation to deliver to the Commissioners



of Inland Revenue before the issue of any loan capital a statement of the amount proposed to be secured by the issue, and subjects such statement with an ad valorem stamp duty of 2s. 6d. for every hundred pounds to be secured by the issue.<sup>1</sup>

“Loan capital” is interpreted to mean any debenture stock, county stock, corporation stock, municipal stock, or funded debt, by whatever name known, or any capital raised by any Local Authority, Corporation, Company, or body of persons formed or established in the United Kingdom, which is borrowed, or has the character of borrowed money, whether it is in the form of stock or in any other form, but does not include any County Council or Municipal Corporation bills repayable not later than twelve months from their date or any overdraft at the bank or other loan raised for a merely temporary purpose for a period not exceeding twelve months, and the expression “Local Authority” includes any County Council, Municipal Corporation, District Council, Dock Trustees, Harbour Trustees, or other local body by whatever name called.

#### BORROWING.

*Overdrafts—Permanent Works—Procedure—Local Loans Act, 1875—Estoppel—Mortgages—Appropriation—The Receiver.*

District Councils should get loans sanctioned before the expenses which they are intended to meet are

<sup>1</sup> The delivery of a statement is not required where the proposed loan is to be secured by instruments chargeable with the duties referred to.

incurred, but loans are sanctioned to defray expenses which have been already incurred, and where a first loan proves inadequate resort may be made to a supplementary loan. Borrowing by Local Authorities on the credit of the rates can be exercised only for purposes specified in the Acts which confer the power.<sup>1</sup>

The Local Authority requiring a loan make an application to the Local Government Board for their sanction; the Board then send down to the Local Authority certain printed forms to be filled up, one of the forms showing the amount of indebtedness and the rateable value, and other financial particulars. The next step to be taken by the Board is (where required) to send down an inspector to hold a local inquiry after a public notice. At that inquiry any person interested in the district is allowed to appear and be heard, and after the inspector has completed his inquiry he makes a report to the Board, who consider the matter, and if they are satisfied that the circumstances are such as to justify their sanction, they give it. If a locality apply for a recommendation to the Public Works Loan Commissioners and the Board are of opinion that a recommendation can properly be given for the advance of an amount at a reduced rate of interest under section 243 of the Public Health Act, 1875, then they make such a recommendation to the Commissioners.

“233. Any Local Authority may, with the sanction of the Local Government Board, for the purpose of defraying any

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<sup>1</sup> *Wenlock v. River Dee Co.*, 1885, 10 A.C. 354.

costs, charges, and expenses incurred, or to be incurred, by them in the execution of this Act, or for the purpose of discharging any loans contracted under the Sanitary Acts or this Act, borrow or re-borrow, and take up at interest, any sums of money necessary for defraying any such costs, charges, and expenses, or for discharging any such loans as aforesaid.

“An Urban Authority may borrow or re-borrow any such sums on the credit of any fund, or all or any rates or rate out of which they are authorised to defray expenses incurred by them in the execution of this Act, and for the purpose of securing the repayment of any sums so borrowed, with interest thereon, they may mortgage to the persons by or on behalf of whom such sums are advanced any such fund or rates or rate.

“A Rural Authority may borrow or re-borrow any such sums, if applied or intended to be applied to general expenses of such authority, on the credit of the common fund out of which such expenses are payable, and if applied or intended to be applied to special expenses of such authority, on the credit of any rate or rates out of which such expenses are payable, and for the purpose of securing the repayment of any sums so borrowed, with interest thereon, they may mortgage to the persons by or on behalf of whom such sums are advanced any such fund rate or rates.”

Overdrafts on the Treasurer of the Council are illegal if intended to forestal funds in order to avoid supervision of the Local Government Board, or as a charge to be satisfied out of future income; but they are not illegal as an expenditure of current income. In 1895, the Local Government Board expressed the following opinion about overdrafts :—

“I am directed by the Local Government Board to advert to your letter with reference to the financial position of the Urban District Council, relating to the overdrafts which have in the past been made on the treasurer of the general district

rate account. I am to state that it appears to the Board that the necessity for the continuance of such irregularities should be obviated by the levying of increased rates of such amount as to cover all current expenditure until the next rate is actually collected, and not merely until the next rate is made. It must be evident to the District Council that the proper method of balancing their income and their expenditure is by calculating the former as accruing at the date when it may reasonably be expected to be received, and not at the date when the rate is made, and if the course indicated is adopted, the Board do not see that any necessity for overdrawing the treasurer's account should in future arise."

But the statutory directions relating to finances should be strictly followed ; no interest on overdrafts could be charged on the rates. In 1880, the High Court decided that a School Board where the current rate had proved insufficient, had not power to contract a temporary loan and so to forestal the next rate ; but in that case the School Board entered into a formal contract with the lender.<sup>1</sup>

Where the Council contract to repay loans at stipulated times, they cannot compel the lender to accept against his will repayment otherwise than according to the terms of the contract.

The purposes of loans, the amounts and periods of them are limited by section 234—

"234. The exercise of the powers of borrowing conferred by this Act, shall be subject to the following regulations, namely,—

"(1.) Money shall not be borrowed except for permanent works (including under this expression any works

<sup>1</sup> Q. v. Reed, 1880, 5 Q.B.D. 483.

\* West Derby Union v. Met. Life Ass. Co., 1897, A.C. 647.

of which the costs ought in the opinion of the Local Government Board to be spread over a term of years) :

- “(2.) The sum borrowed shall not at any time exceed with the balances of all the outstanding loans contracted by the Local Authority under the Sanitary Acts and this Act; in the whole the assessable value for two years of the premises assessable within the district in respect of which such money may be borrowed :
- “(3.) Where the sum proposed to be borrowed with such balances (if any) would exceed the assessable value for one year of such premises, the Local Government Board shall not give their sanction to such loan until one of their inspectors has held a local inquiry and reported to the said Board :
- “(4.) The money may be borrowed for such time, not exceeding 60 years, as the Local Authority, with the sanction of the Local Government Board, determine in each case ; and, subject as aforesaid, the Local Authority shall either pay off the moneys so borrowed by equal annual instalments of principal or of principal and interest, or they shall in every year set apart as a sinking fund, and accumulate in the way of compound interest by investing the same in the purchase of Exchequer bills or other Government securities, such sum as will with accumulations in the way of compound interest be sufficient, after payment of all expenses, to pay off the moneys so borrowed within the period sanctioned :
- “(5.) A Local Authority may at any time apply the whole or any part of a sinking fund set apart under this Act in or towards the discharge of the money for the repayment of which the fund has been established : Provided that they pay into the fund in each year and accumulate until the whole of the

moneys borrowed are discharged, a sum equivalent to the interest which would have been produced by the sinking fund or the part of the sinking fund so applied :

“(6.) Where money is borrowed for the purpose of discharging a previous loan, the time for repayment of the money so borrowed shall not extend beyond the unexpired portion of the period for which the original loan was sanctioned, unless with the sanction of the Local Government Board, and shall in no case be extended beyond the period of 60 years from the date of the original loan.”

“Where any Urban Authority borrow any money for the purpose of defraying private improvement expenses, or expenses in respect of which they have determined a part only of the district to be liable, it shall be the duty of such authority, as between the ratepayers of the district, to make good, so far as they can, the money borrowed as occasion requires, either out of private improvement rates or out of a rate levied in such part of the district as aforesaid.”

The Local Government Board have placed a liberal interpretation on “permanent works.” They consider the period which the proposed works may be expected to last, and sanction a loan for that time.<sup>1</sup> The maximum period is rarely sanctioned ; the Board are guided by the nature of the works, the outstanding loans, and local conditions and prospects. After the expiry of the prescribed period a rate cannot be made for the purpose of paying any part of the loan.<sup>2</sup> Usually the Board allow 50 years for repayment of a loan raised for the purchase of land and 30 years for buildings.<sup>3</sup>

<sup>1</sup> Machines, fire-engines, rollers, and closets have been treated as permanent works.

<sup>2</sup> *R. v. Wigan*, 1876, 1 A.C. 611.

<sup>3</sup> L.G.B. Circular, 29 Oct. 1897.

If the statutory restrictions imposed on borrowing are not adhered to, lenders cannot recover their money. A District Council is not estopped by deed or otherwise from showing that it had no power to do that which it purports to have done;<sup>1</sup> but a transferee for value without notice is protected.<sup>2</sup>

The appropriation of money to the purposes for which it is borrowed may be secured by a bond where the Public Works Loan Commissioners are the lenders, and it is the duty of the Local Government Board to see that such money is so appropriated (38 & 39 Vict. c. 89. secs. 35 & 36). Prompt repayment is necessary. Arrears of capital money and instalments cannot be recovered where the District Council would have to levy rates retrospectively for the purpose of paying;<sup>3</sup> but repayment of loans by the Public Works Loan Commissioners may be postponed for five years on their recommendation. Where a sinking fund is applied towards the discharge of the loan before the end of the period for which it is sanctioned the interest which would have accrued on the amount withdrawn must be paid into the sinking fund in addition to the other payments (L.G.B. Circular, 30 Sept. 1875, Interest Tables have been issued). Unexpended balances in hand after completion of works may be paid to the lenders in reduction of principal, if they will accept it, but

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<sup>1</sup> *Horton v. Westminster Imp. Commrs.*, 1852, 7 Ex. 780; Ex parte Watson, 1888, 21 Q.B.D. 301.

<sup>2</sup> *Webb v. Commrs. of Heme Bay*, 1870, L.R., 5 Q.B. 642.

<sup>3</sup> *R. v. O. Bedlington*, 1884, 48 J.P. 486.



such payment cannot satisfy the next yearly instalment of principal and interest. The last paragraph of section 234 is extended to Rural Districts by force of section 232. If the money borrowed cannot be discharged out of the private improvement rate raised in a part of the district, the ratepayers at large may be rated to discharge the loan.<sup>1</sup> If the sinking fund is applied in any way foreign to the purpose for which it is set apart, the Council may be compelled by mandamus to satisfy the requirements of section 234. In addition to the general borrowing powers a District Council can mortgage the land and works vested in them for the disposal of sewage for a sum not exceeding three-fourths of the purchase money of the land. Such loan and interest may be paid out of the General District Rate (section 235). It is not subject to the supervision of the Local Government Board. The mortgagee can require payment at the stipulated times and in default he can foreclose. Section 236 provides that mortgages authorised by the Public Health Act are to be in this form :—

*Form of Mortgage of Rates.*

“By virtue of the Public Health Act, 1875, we the  
being the Local Authority under  
that Act for the district of \_\_\_\_\_ in  
consideration of the sum of \_\_\_\_\_ paid to the  
treasurer of the said district by A.B. of \_\_\_\_\_  
for the purposes of the said Act, do grant and assign unto the

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<sup>1</sup> Horn v. Sleaford R.D.C., 1<sup>st</sup> 98, 2 Q.B. 358.



said A.B., his executors, administrators, and assigns, such proportion of the rates arising or accruing by virtue of the said Act [the rates mortgaged] as the said sum of

doth or shall bear to the whole sum which is or shall be borrowed on the credit of the said rates, to hold to the said A.B., his executors, administrators, and assigns, from the day of the date hereof until the said sum of

with interest at the rate of  
per centum per annum for the same, shall be fully paid and  
satisfied : And it is hereby declared that the said principal  
sum shall be repaid on the    day of

sum shall be repaid on the \_\_\_\_\_ day of \_\_\_\_\_  
at \_\_\_\_\_ [place]

of payment]. Dated this \_\_\_\_\_ day of  
one thousand eight hundred and

“[To be sealed with the Common Seal of the Local Authority.]”

A mortgage on land and sewerage works may be adapted to the requirements of the mortgagee. An ad valorem stamp duty of 2s. 6d. for every 100*l.* is chargeable on mortgages for sums exceeding 300*l.* Mortgages are transferable. A register of mortgages and also one of transfers of mortgages is to be kept at the office of the District Council. They are open to public inspection. The clerk who does not duly register transfers is subject to a penalty of 20*l.*

A transfer of a mortgage is chargeable with a stamp duty of 6*d.* for every 100*l.* of the amount transferred, exclusive of any interest which is not in arrear.

If the District Council fail to discharge mortgages of rates, a receiver with power to collect the rate

charged may be appointed by the Justices of the Peace, and the Council may be compelled to make a rate by order of the High Court.

Section 239, P.H. Act, 1875, is as follows :—

“239. If at the expiration of six months from the time when any principal money or interest has become due on any mortgage of rates made under this Act, and, after demand in writing, the same is not paid, the mortgagee or other person entitled thereto may, without prejudice to any other mode of recovery, apply for the appointment of a receiver to a court of summary jurisdiction; and such court may, after hearing the parties, appoint in writing under their hands and seals some person to collect and receive the whole or a competent part of the rates liable to the payment of the principal or interest in respect of which the application is made, until such principal or interest, or both, as the case may be, together with the costs of the application and of collection are fully paid.

“On such appointment being made, all such rates, or such competent part thereof as aforesaid, shall be paid to the person appointed, and when so paid shall be so much money received by or to the use of the mortgagee or mortgagees of such rates, and shall be rateably apportioned between them.

“Provided that no such application shall be entertained unless the sum or sums due and owing to the applicant amount to one thousand pounds, or unless a joint application is made by two or more mortgagees or other persons to whom there may be due, after such lapse of time and demand as last aforesaid, moneys collectively amounting to that sum.”

District Councils are empowered to grant yearly rentcharges issuing out of the premises in respect of which any advance of money has been made, to the person who made the advance; thus, a stranger

may acquire a rentcharge upon the land of another. Such rentcharges are personal estate, and accruo from the day of completion of the works on which the money advanced has been expended, and are payable by equal half-yearly payments during a term not exceeding 30 years. The provisions relating to deduction from rent and to redemption of private improvement rates apply to rentcharges. An action of debt lies at the suit of the person entitled to a rentcharge<sup>1</sup>. Where the ownership of the property charged is severed, the owner of each part of it is subject to the whole charge, and has a right over to compel co-owners to contribute in respect of their part of the property.<sup>2</sup>

### THE PURCHASE OF LANDS FOR STATUTORY PURPOSES.

#### *By Agreement and under the Lands Clauses Acts— The Petition—Provisional Orders.*

Local Authorities are invested with power to acquire messuages, buildings, lands, easements, and hereditaments of any tenure for undertakings authorised by the Public Health Acts. They have a similar power under the Allotments Acts, the Baths and Wash-houses Acts, the Electric Lighting Acts,

<sup>1</sup> *Thomas v. Silvester*, 1873, L.R., 8 Q.B. 369.

<sup>2</sup> *Christie v. Barker*, 1884, 53 L.J., Q.B. 537. Rentcharges are not deductions from annual value of premises; they do not affect the rent a tenant will give, but show how the rent is divided between the owners. *R. v. Woking*, 1835, 4 Ad. & E. 40.

the Housing of the Working Classes Act, 1890, the Museums and Gymnasiums Act, 1891, the Technical and Industrial Institutions Act, 1892, and the Public Libraries Act, 1892. There are few public undertakings which can be commenced without the purchase of land; the site of the sewage farm or the waterworks; a street improvement or a park.<sup>1</sup>

A District Council can purchase by agreement, avoiding troublesome questions involved in a compulsory acquisition under the Lands Clauses Acts, 1845-1883, and owners are seldom hostile unless their land is wanted for a sewage farm, or against a hospital for infectious diseases, which may prejudice the residential value of a neighbourhood. Section 175, Public Health Act, 1875, is as follows:—

“Any Local Authority may, for the purposes and subject to the provisions of this Act, purchase or take on lease, sell, or exchange any lands, whether situate within or without their district; they may also buy up any water-mill, dam, or weir which interferes with the proper drainage or the supply of water to their district.

“Any lands acquired by a Local Authority in pursuance of any powers in this Act contained, and not required for the purposes for which they

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<sup>1</sup> The Council can hold lands without licence in mortmain for the purposes of the Act, section 7, Public Health Act, 1875. By the Mortmain Act, 1888, section 6, and Mortmain Act, 1892, section 2, land may be acquired for any purpose under the Public Health Acts, but if the assurance is by will it must be executed not less than 12 months before the death of the assnor, or be the reproduction in substance of a devise made in a previous will in force at the time of such reproduction, and which was executed not less than 12 months before the death of the assnor.

were acquired, shall (unless the Local Government Board otherwise direct) be sold at the best price that can be gotten for the same, and the proceeds of such sale shall be applied towards discharge, by means of a sinking fund or otherwise, of any principal moneys which have been borrowed by such Authority on the security of the fund or rate applicable by them for the general purposes of this Act, or if no such principal moneys are outstanding shall be carried to the account of such fund or rate."

The quantity of land which may be purchased is not restricted to the exact amount wanted for some authorised purpose. The Council may have to purchase more than they want to avoid a severance of premises, or having regard to increase of population a reserve of land for sewage disposal may be desirable. It is not obligatory to sell land which is not immediately utilized for the specific purpose for which it was acquired. It may be temporarily applied to any purpose which will not preclude it from being ultimately used for the purpose for which it was acquired<sup>1</sup>; but a District Council cannot devote the land permanently to a purpose foreign to that which they acquired it, and the sanction of the Local Government Board to the retention of surplus land does not remove that restriction.<sup>2</sup> Leasing for any term may be sanctioned when the Council can con-

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<sup>1</sup> *A.G. v. Teddington*, 1898, 1 Ch. C.C.

<sup>2</sup> *A.G. v. Hanwell*, 1890, 16 T.L.R. 462.

·veniently spare the land (section 177, P.H. Act, 1875). The failure of the purpose of acquisition may be a convenient sparing but the abandonment of it is not.

Section 327 of the Act protects navigation rights from interference by Local Authorities. The consent of Commissioners of Sewers, the Admiralty, the War Office, and Harbour and Dock Authorities must be obtained before works can be executed, which prejudice or affect their rights, privileges, powers, or authorities (section 327 and 332, P.H. Act, 1875).

The Lands Clauses Acts are incorporated with the Public Health Act, 1875, so far as they relate to the purchase of lands for the purpose of the Public Health Acts, except section 127 of the Lands Clauses Act, 1845, which relates to the sale and disposal of surplus lands. Before the compulsory powers of the Lands Clauses Act can be put in force the requirement of section 176, Public Health Act, 1875, must be fulfilled. The notices served pursuant to that section are not equivalent to a notice to treat under the Lands Clauses Act, 1845; such notices create no contract between the parties<sup>1</sup>, whereas under a notice to treat the lands are fixed; neither party can get rid of the obligation, the one to purchase, the other to convey<sup>2</sup>. Crown lands cannot be compulsorily

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<sup>1</sup> *Burgess v. Bristol U.S.A.*, 1886, 50 J.P. 456.

<sup>2</sup> *Haynes v. Haynes*, 1861, 1 Dr. & Sm. 426.

acquired. Section 176, Public Health Act, 1875, is as follows :—

“With respect to the purchase of lands by a Local Authority for the purposes of this Act, the following regulations shall be observed : (that is to say),

“(1.) The Lands Clauses Consolidation Acts, 1845, 1860, and 1869, shall be incorporated with this Act, except the provisions relating to access to the special Act, and except section one hundred and twenty-seven of the Lands Clauses Consolidation Act, 1845 :

“(2.) The Local Authority, before putting in force any of the powers of the said Lands Clauses Consolidation Act with respect to the purchase and taking of lands otherwise than by agreement, shall

Publish once at least in each of three consecutive weeks in the month of November, in some local newspaper circulated in their district an advertisement describing shortly the nature of the undertaking in respect of which the lands are proposed to be taken, naming a place where a plan of the proposed undertaking may be seen at all reasonable hours, and stating the quantity of land that they require ; and shall further

Serve a notice in the month of December on every owner or reputed owner, lessee or reputed lessee, and occupier of such lands, defining in each case the particular lands intended to be taken, and requiring an answer stating whether the person so served assents, dissents, or is neuter in respect of taking such land.

“(3.) On compliance with the provisions of this section with respect to advertisements and notices, the Local Authority may, if they think fit, present a petition under their seal to the Local Government Board. The petition shall state the lands intended to be taken, and the purposes for which they are required, and the names of the owners, lessees, and



occupiers of lands who have assented, dissented, or are neuter in respect of the taking such lands, or who have returned no answer to the notice; it shall pray that the Local Authority may, with reference to such lands, be allowed to put in force the powers of the said Lands Clauses Consolidation Acts with respect to the purchase and taking of lands otherwise than by agreement, and such prayer shall be supported by such evidence as the Local Government Board requires."

The three weeks in which the advertisements are published must be in the same month and must be published in the same newspaper each week, and the notices to owners must be served in the month next following that of the publication.

The deposit of the plan should be made so that it may be seen during office hours at the appointed place so soon as the first advertisement appears. Where the application is by a Rural District Council it is not necessary that separate proceedings should be taken in regard to each contributory place affected by the proposals. Where land is required for widening a street it should be stated whether the street is repairable by the public. District Councils are empowered to carry sewers and water mains through lands without purchasing them, hence in such cases these regulations are inapplicable. The service of the notices must be effected in one of the modes directed by section 267 of the Public Health Act, and a statutory declaration specifying the mode of service must be made by person who served them, and the clerk must make a statutory declaration showing that all the requirements of section 176 have been



complied with, and the following exhibits should be annexed : (1) copies of newspapers with the advertisements ; (2) copy of form of notice ; (3) a statement of the replies of owners, lessees, and occupiers of the parcels of land in respect of which notices were served. The petition with a schedule of lands to be taken should be accompanied by a copy of the deposited plan and by two copies of the book of reference.<sup>1</sup>

“(4.) On the receipt of such petition and on due proof of the proper advertisements having been published and notices served, the Local Government Board shall take such petition into consideration, and may either dismiss the same, or direct a local inquiry as to the propriety of assenting to the prayer of such petition ; but until such inquiry has been made no Provisional Order shall be made affecting any lands without the consent of the owners, lessees, and occupiers thereof :

“(5.) After the completion of such inquiry the Local Government Board may, by Provisional Order, empower the Local Authority to put in force, with reference to the lands referred to in such order, the powers of the said Lands Clauses Consolidation Acts with respect to the purchase and taking of lands otherwise than by agreement, or any of them, and either absolutely or with such conditions and modifications as the Board may think fit, and it shall be the duty of the Local Authority to serve a copy of any order so made in the manner and on the person in which and on whom notices in respect of such lands are required to be served :

“Provided that the notices by this section required to be given in the months of November and December may be given

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<sup>1</sup> See instructions of the L.G. Board as to applications for Provisional Orders under section 176, 29th August 1898.

in the months of September and October or of October and November, but in either of such last-mentioned cases an inquiry preliminary to the Provisional Order to which such notices refer shall not be held until the expiration of one month from the last day of the second of the two months in which the notices are given ; and any notices or orders by this section required to be served on a number of persons having any right in, over, or on lands in common may be served on any three or more of such persons on behalf of all such persons."

A District Council may abandon a scheme after the Provisional Order has been confirmed.<sup>1</sup>

When land is compulsorily purchased for a statutory purpose by a public authority it seems that they are not bound to comply with the requirements of local bye-laws, or to set back a street frontage to conform to an existing building line.<sup>2</sup>

Where more than 10 houses occupied by labouring classes are proposed to be taken, a statement of the number, description, and situation of such houses, the number of persons residing therein, and a copy of so much of the plan as relates thereto must be supported by an affidavit and lodged in the Private Bill Office (S.O. 38, H. of Commons). The Local Government Board particularly request that the petition, declaration, affidavit, notices, and other documents may be on foolscap paper of the usual size, and that, whenever it will not involve additional expense, such documents may be printed or lithographed so as to facilitate examination.

<sup>1</sup> *Burr v. Wimbledon L.B.*, W.N., 1887, page 155.

<sup>2</sup> See *L.C.C. v. School Board for London*, 1892, 2 Q.B. 606 ; and *City and S. Ry. v. L.C.C.*, 1891, 2 Q.B. 513.

## CONVEYANCES TO DISTRICT COUNCILS.

District Councils are constantly purchasing land for the widening of streets pursuant to section 154, Public Health Act, 1875, or under powers conferred by the Highway Acts. The value of land so acquired is generally small, and the charges for conveying it may become the chief item of expense. To avoid this an improvement is often effected by an arrangement for dedication with the owner of the adjoining land ; but where the formal conveyance of the site is necessary, the following short form of deed may be used :—

“ I, \_\_\_\_\_, of \_\_\_\_\_, in consideration of the sum of \_\_\_\_\_, to be paid by the District Council, acting by virtue of 38 & 39 Vict. c. 65, intituled the Public Health Act, 1875, do hereby grant and convey unto the said Council all that piece of land coloured \_\_\_\_\_ in the plan hereto annexed, and all my estate, right, title, term, and interest to and in the same, and every part thereof, to hold to the said Council and their successors for ever.

“ In witness whereof I have hereunto set my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_ .”

Where Local Authorities exercise the statutory right to carry sewers or water mains through land it is not necessary to purchase or otherwise acquire the land<sup>1</sup> ; if the owner suffers loss by reason of the exercise of the statutory right, he can claim compensation pursuant to section 308, Public Health Act, and his receipt for the sum awarded will be a discharge

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<sup>1</sup> Thornton v. Nutter, 1867, 31 J.P. 419.

to the Council. It may be that circumstances may make it advantageous to obtain a grant by way of sale of the right to lay and maintain pipes in land ; but even in such cases there is not a conveyance of property within Schedule I., Part I., of the Solicitors' Remuneration Act, 1881<sup>1</sup>, and consequently the scale is not applicable to solicitors charges in respect of such grants.

The Commissioners of Inland Revenue collect stamp duty in cases where property is vested by way of sale by Act of Parliament, or purchased under statutory powers pursuant to section 12 of the Finance Act, 1895, which is as follows :—

“Where, after passing of this Act, by virtue of any Act, whether passed before or after this Act either—

“(a.) any property is vested by way of sale in any person ;  
or

“(b.) any person is authorised to purchase property ;  
such person shall within three months after the passing of the Act, or the date of the vesting, whichever is later, or after completion of the purchase, as the case may be, produce to the Commissioners of Inland Revenue a copy of the Act printed by the Queen's Printer of Acts of Parliament, or some instrument relating to the vesting in the first case, and an instrument of conveyance of the property in the other case, duly stamped with the *ad valorem* duty payable upon a conveyance on sale of the property ; and in default of such production, the duty, with interest thereon at the rate of 5 per cent. per annum from the passing of the Act, date of vesting or completion of the purchase, as the case may be, shall be a debt to Her Majesty from such person.”

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<sup>1</sup> *In re Stewart*, 1889, 41 Ch.D. 494.

## CHAPTER 3.

## WATER SUPPLY.

*The Monopoly of Companies—The Water Mains—Purity of Supply—Domestic Purposes—The Communication Pipes—Waste and Misuse of Water—Supply by Measure—The Water Rate—Liability of Owners—Cutting off the Supply—Recovery of the Rate—The Compulsory Supply—Rural Districts—The Public Health Water Act, 1878—Stand-pipes—Public Wells—Rating of Waterworks—Trading Companies.*

The powers of Local Authorities in relation to the supply of water are prescribed by the Public Health Act, 1875, sections 51 to 69, and the Public Health (Water) Act, 1878, and for the purpose of enabling the supply of water the Waterworks Clauses Act, 1863, and sections 28 to 74 of the Waterworks Clauses Act, 1847, are incorporated therewith.

Section 51, Public Health Act, 1875, is as follows :—

“Section 51. Any Urban Authority may provide their district, or any part thereof, and any Rural Authority may provide their district, or any contributory place therein, or

any part of any such contributory place, with a supply of water proper and sufficient for public and private purposes, and for those purposes, or any of them, may—

- “(1) Construct and maintain waterworks, dig wells, and do any other necessary acts ; and
- “(2) Take on lease or hire any waterworks, and (with the sanction of the Local Government Board) purchase any waterworks, or any water or right to take or convey water, either within or without their district, and any rights, powers, and privileges of any water company ; and
- “(3) Contract with any person for a supply of water.”

Waterworks are interpreted to include—

Streams, springs, wells, pumps, reservoirs, cisterns, tanks, aqueducts, cuts, sluices, mains, pipes, culverts, engines, and all machinery, lands, buildings, and things for supplying or used for supplying water, also the stock-in-trade of any water company.

The purchase by the Council of waterworks or right to take water requires the sanction of the Local Government Board ; and the sale and transfer by a water company to the Council of all their rights, powers, and privileges, and their waterworks require the authorisation of a special resolution of the members passed in manner provided by the Companies Act, 1862, in the case of a company registered under that Act and in other cases of a resolution passed by three-fourths in number and value of the members present at a specially convened meeting (section 63, P.H. Act, 1875. Companies Act, 1862, 25 & 26 Vict. c. 89, s. 51).

Water rights cannot be acquired compulsorily. Section 332, P.H. Act, 1875, contains a saving clause for water rights generally, and prohibits Local Authorities from injuriously affecting any stream, reservoir, canal, river, or the water therein, without the consent in writing of the persons who are by law entitled to prevent or be relieved against injury ; but the District Council can acquire land compulsorily and utilise it by sinking wells for purposes of water supply. Where a water company is bound by their special Act to sell their undertaking to a Local Authority, when so required, at a price to be fixed in default of agreement by arbitration, they are not entitled to compensation for loss of the right to supply water.<sup>1</sup>

Within the limits in which a water company are authorised to supply water, new waterworks may not be established by a District Council for the purpose of supplying water, but they may establish works to supply water to be used for public sanitary purposes and for scavenging,<sup>2</sup> or may make additions and improvements to existing waterworks.<sup>3</sup>

This restriction is contained in section 52, Public Health Act, 1875 :—

“ 52. Before commencing to construct waterworks within the limits of supply of any water company empowered by Act of Parliament or any order confirmed by Parliament to supply water, the Local Authority shall give written notice

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<sup>1</sup> Stockton Water Co. v. Kirkcaldam L.B., 1893, A.C. 411.

<sup>2</sup> West Surrey Water Co. v. Chertsey Union, 1894, 3 Ch. 513.

<sup>3</sup> Cleveland Water Co. v. Redcar L.B., 1895, 1 Ch. 162.

to every water company within whose limits of supply the Local Authority are desirous of supplying water, stating the purposes for which and (as far as may be practicable) the extent to which water is required by the Local Authority.

"It shall not be lawful for the Local Authority to construct any waterworks within such limits if and so long as any such company are able and willing to supply water proper and sufficient for all reasonable purposes for which it is required by the Local Authority; and any difference as to whether the water which any such company are able and willing to lay on is proper and sufficient for the purposes for which it is required, or whether the purposes for which it is required are reasonable, or (if and so far as the charges of the company are not regulated by Parliament) as to the terms of supply, shall be settled by arbitration in manner provided by this Act."

A water company is not able and willing to supply water within the district unless it has the necessary powers and the requisite supply of water.<sup>1</sup> If a District Council omit to give the required notice they may be restrained by injunction from establishing new waterworks within the area of supply of the company, and the extension of existing waterworks into an area added to an Urban District must be notified to a company whose limits of supply at the time of the extension of the Urban District included the added area.<sup>2</sup>

Before a District Council commence the construction of a reservoir exceeding 100,000 gallons in capacity, two months' notice must be given in local newspapers, and if objection is raised to the proposed

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<sup>1</sup> *Richmond Water Co. v. Richmond Vestry*, 1876, L.R., 3 Ch.D. 82.

<sup>2</sup> *Huddersfield Corporation v. Ravensthorpe U.D.O.*, 1896, 2 Ch. 121.



works by any person whose interests are affected thereby an inquiry by the Local Government Board is necessary before the reservoir can be formed (section 53, Public Health Act, 1875). If the reservoir becomes a source of danger any person interested may lay a complaint before a court of summary jurisdiction. The justices may order repairs or the lowering of the water, and provide for payment of costs of their order and expenses of any work done by their direction (Waterworks Clauses Act, 1863, sections 3 to 10). An appeal lies from such order to the quarter sessions. The Council may construct their reservoir either within or without their district; and two or more Local Authorities may combine together for the purpose of executing and maintaining any waterworks that may be for the benefit of their respective districts or any parts thereof (section 285, Public Health Act, 1875).

Section 54, Public Health Act, 1875, enables the Council to bring the water from any distance to their district :—

“54. Where a Local Authority supply water within their district, they shall have the same powers and be subject to the same restrictions for carrying water mains within or without their district as they have and are subject to for carrying sewers within or without their district, respectively, by the law for the time being in force.”

When the District Council have resolved to supply water, they are entitled to put in force the provisions of the Public Health Acts relating to water

supply, and they may carry their mains through and under streets repairable by the public, and through and under private streets, without obtaining consent of the owner of the soil.<sup>1</sup> The powers of the Council for making sewers within the district are regulated by section 16. A statutory right to carry the water mains through any street or place laid out, as or intended for a street, is conferred, and after notifying the owner or occupier through any lands whatsoever within the district, if on report of the surveyor it appear necessary. This report and service of the notice must be given before the right to enter private property accrues. Then if the Council's officers are obstructed, a summons should be taken out against the offender pursuant to section 306, Public Health Act, 1875.

Where the mains or other works extend beyond the limits of the district, notice of the intended work must be given by advertisement in local newspapers. Such notice must state the termini of the mains, their direction, and the names of parishes, roads, streets, and lands through or on which the work is to be done, as in the case of sewage works without the district. Service of notice on landowners and Public Authorities interested is essential. Easements are included in lands, so owners of easements must be served. Millowners are generally interested in flow of water over land adjoining their mill, and omission

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<sup>1</sup> *Hill v. Wallasey L.B.*, 1894, 1 Ch. 133.

to notify them will entitle them to cut the Council's mains and recover damages.<sup>1</sup>

Pure and wholesome water must be supplied. Where danger to health is menaced by an insufficient or unwholesome supply of water, there is ground for a complaint to the Local Government Board (section 299, Public Health Act, 1870). Section 55 is as follows :

"55. The Local Authority shall provide and keep in any waterworks constructed or purchased by them a supply of pure and wholesome water ; and where a Local Authority lay any pipes for the supply of any of the inhabitants of their district, the water may be constantly laid on at such pressure as will carry the same to the top storey of the highest dwelling-house within the district or part of the district supplied."

If the Council fail to take due care to cleanse their mains and thereby the health of consumers is injured, the Council are responsible, but not where contamination is caused by leaden communication pipes.<sup>2</sup> To avoid lead poisoning, which may occur where water is soft, iron pipes are usually laid.

### *Domestic Purposes.*

When the service pipes are laid and the water rate paid or tendered, a consumer can compel the Council to furnish a sufficient supply for domestic purposes.

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<sup>1</sup> Cleckheaton D.C. v. Firth, 1898, 62 J.P. 536.

<sup>2</sup> Milnes v. M. of Huddersfield, 1883, 12 Q.B.D. 143, A.C. 511.

“Domestic purposes” are not defined by the Statutes. The use made of the water is the test, not whether the persons who use it reside on the premises. Each case depends on its facts which are for the consideration of the tribunal before which a case is contested. Consumption for office purposes in a large pile of building may be purely domestic,<sup>1</sup> but a supply required to supply hydraulic pressure for working a lift is not domestic.<sup>2</sup> Baths, fixed or moveable,<sup>3</sup> hot or cold, pipes for warming a house,<sup>4</sup> and a pleasure garden<sup>5</sup> are included in domestic purposes. By the Waterworks Clauses Act, 1863, (sections 12 and 13) :—

“Section 12. A supply of water for domestic purposes shall not include a supply of water for cattle, or for horses, or for washing carriages where such horses or carriages are kept for sale or hire or by a common carrier, or a supply for any trade, manufacture, or business, or for watering gardens, or for fountains, or for any ornamental purpose.

“Section 13. Where the undertakers are authorised by the special Act to supply water for other than domestic purposes, they shall not be liable, in the absence of express stipulation, under any agreement for the supply of water for other than domestic purposes, to any penalty or damages for not supplying such water, if the want of such supply arises from frost, unusual drought, or other unavoidable cause or accident.”

Farmers who take water for the homestead are not entitled to use the water for their cattle on the farm.

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<sup>1</sup> Compare *Smith v. Muller*, 1894, 1 Q.B. 192.

<sup>2</sup> *Cook v. New River Co.*, 1889, 14 A.C. 698.

<sup>3</sup> *Weaver v. Cardiff*, 1883, 48 L.T. 906; *Walker v. Lambeth Wks.*, 1894, 71 L.T. 75.

<sup>4</sup> *Smith v. Muller*, 1894, 1 Q.B. 192.

<sup>5</sup> *Bristol Wks. v. Wren*, 1883, 15 Q.B.D. 637

### *The Communication Pipes.*

The District Council are, at the request of occupiers, to lay down communication pipes for the supply of houses. An annual payment for such pipes, in addition to the water rate, may be enforced. Neglect to furnish a supply to a house in a part of the district where the Council have laid mains renders them liable to a forfeiture of 5*l*. Owners can purchase pipes laid by the Council, or they or the occupiers can lay their own pipes and connect them with the mains under the supervision of the Surveyor of the Council, and in accordance with the prescribed regulations as to quality and bore of the pipes (sections 48 and 49). Section 52 of the Act of 1847 empowers an owner or occupier to break up the pavement of so much of a street as is between the water main and his house, and any sewer or drain therein, he is to make compensation for damage done by such work, and to be responsible for negligence about doing the work or reinstating the surface of the street.<sup>1</sup>

The following sections of the Waterworks Clauses Acts, 1847 and 1863, relate to waste and misuso of water :—

“Section 54. Every person supplied with water shall, when required by the Council, provide a proper cistern to hold the water with which he shall be so supplied, with a ball and stop-cock, in the pipe bringing the water from the

<sup>1</sup> Pavement of the street not of the footpath only. *Glover v. E. Lond. Wks.*, 1868, 17 L.T. 475.

works of the Council to such cistern, and shall keep such cistern, ball, and stop-cock in good repair, so as effectually to prevent the water from running to waste ; and in case any such person shall, when required by the Council, neglect to provide such system, ball, or stop-cock, or to keep the same in good repair, the Council may cut off the pipe or turn off the water from the premises of such person until such cistern and ball and stop-cock shall be provided or repaired, as the case may require.

“ Section 20. If any person, not being supplied with water by the Council, wrongfully takes or uses any water from any reservoir, watercourse, conduit, or pipe belonging to the Council, or from any pipe leading to or from any such reservoir, watercourse, conduit, or pipe, or from any cistern or other like place containing water belonging to the Council or supplied by them for the use of any consumer of the water of the Council, he shall for every such offence be liable to a penalty not exceeding five pounds.”

And by sections 17 and 19 of the Act of 1863 :—

“ 17. If any person supplied with water by the Council wilfully or negligently causes or suffers any pipe, valve, cock, cistern, bath, soil-pan, watercloset, or other apparatus or receptacle to be out of repair, or to be so used or contrived as that the water supplied to him by the Council is or is likely to be wasted, misused, unduly consumed, or contaminated, or so as to occasion or allow the return of foul air, or other noisome or impure matter, into any pipe belonging to or connected with the pipes of the Council, he shall for every such offence be liable to a penalty not exceeding five pounds.

“ 19. It shall not be lawful for the owner or occupier of any premises supplied with water by the Council, or any consumer of the water of the Council, or any other person, to affix or cause or permit to be affixed any pipe or apparatus to a pipe belonging to the Council, or to a communication or service pipe belonging to or used by such owner, occupier, consumer, or other person, or to make any alteration in any

such communication or service pipe, or in any apparatus connected therewith, without the consent in every such case of the Council; and if any person acts in any respect in contravention of the provisions of the present section, he shall for every such offence be liable to a penalty not exceeding five pounds, without prejudice to the right of the Council to recover damages from him in respect of any injury done to their property, and without prejudice to their right to recover from him the value of any water wasted, misused, or unduly consumed."

The fixing of a tap to stop the flow of water during frost is an infringement of section 19.<sup>1</sup> Owners of houses under 10*l.* value are responsible for negligently suffering the water fittings to be in a state to permit waste.<sup>2</sup>

### *Supply by Measure.*

The use of meters cannot be enforced where the supply of water is provided generally for the inhabitants, but where a supply is furnished by agreement the use of meters may be made a condition. Section 38, Public Health Act, 1875, is as follows:—

"A Local Authority may agree with any person to supply water by measure, and as to the payment to be made in the form of rent or otherwise for every meter provided by them.

"They shall at all times, at their own expense, keep all meters and other instruments for measuring water, let by them for hire to any person, in proper order for correctly registering the supply of water, and in default of their so doing, such person shall not be liable to pay rent for the same during such time as such default continues.

<sup>1</sup> Williams v. Llandudno, Nov. 13, 1897.

<sup>2</sup> Brock v. Harrison, 1900, 63 J.P. 455.



"The Local Authority shall, for the purposes aforesaid, have access to and be at liberty, at all reasonable times, to remove, test, inspect, and replace any such meter or other instrument."

The register of the meters indicates the quantity supplied. Penalties for injuring meters and for falsifying the registers may be enforced (sections 59, 60, P.H. Act, 1875).

A District Council is empowered to supply water for public baths and wash-houses or for trading or manufacturing purposes on agreed terms, or gratuitously where baths are not used for private profit, and the Local Government Board can authorise a District Council to supply water to an adjoining Local Authority (sections 61 and 65, P.H. Act, 1875).

It is obligatory on the Council to provide hydrants for securing a supply of water for extinguishing fires. Section 66, Public Health Act, 1875, is :—

"Every Urban Authority shall cause fire-plugs and all necessary works, machinery, and assistance for securing an efficient supply of water in case of fire to be provided and maintained, and for this purpose they may enter into any agreement with any water company or person.

"And they shall paint or mark on the buildings and walls within the streets words or marks near to such fire-plugs to denote the situation thereof, and do such other things for the purposes aforesaid as they may deem expedient."

Where hydrants are fixed by a water company at the request of the Council, they are maintained at the cost of the ratepayers (section 38, Wks. Cl. Act, 1847).<sup>1</sup> A company is not obliged to lay pipes of

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<sup>1</sup> Grand Junction Wks. v. Brentford L.B., 1894, 2 Q.B. 735.



such a gauge that hydrants can be fixed.<sup>1</sup> The hydrants may be used for other purposes than the extinguishment of fires.<sup>2</sup>

Where a water company neglect their statutory obligation to furnish a sufficient supply of water for any purpose they are subject to penalties (section 43, Wks. Cl. Act, 1847), but unusual drought, or frost, or other unavoidable cause exempts them from their obligation.<sup>3</sup>

A fire brigade may be supported by the Council, and charges may be made for extinguishing fires beyond the limits of the district. Sections 32 and 33 of the Town Police Clauses Act, 1847, provide—

“Section 32. The Commissioners may purchase or provide such engines for extinguishing fire, and such water buckets, pipes, and other appurtenances for such engines, and such fire escapes and other implements for safety or use in case of fire, and may purchase, keep, or hire such horses for drawing such engines as they think fit, and may build, provide, or hire places for keeping such engines, with their appurtenances, and may employ a proper number of persons to act as firemen, and may make such rules for their regulation as they think proper, and give such firemen and other persons such salaries and such rewards for their exertions in cases of fire as they think fit.

“Section 33. The Commissioners may send such engines, with their appurtenances, and the said firemen, beyond the limits of the special Act, for extinguishing fire in the neighbourhood of the said limits; and the owner of the lands or

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<sup>1</sup> *R. v. Wells Water Co., L.T.*, 1886, p. 120.

<sup>2</sup> *L.O.C. v. E.L. Wks. Co.*, 1900, 1 Q.B. 330.

<sup>3</sup> *Industrial Dwellings Co. v. E. London Wks.*, 1894, 58 J.P. 430.

buildings where such fire shall have happened shall in such case defray the actual expense which may be thereby incurred, and shall also pay to the Commissioners a reasonable charge for the use of such engines with their appurtenances, and for the attendance of such firemen ; and in case of any difference between the Commissioners and the owner of the said lands or buildings, the amount of the said expenses and charge, as well as the propriety of sending the said engines and firemen as aforesaid for extinguishing such fire (if the propriety thereof be disputed), shall be determined by two justices, whose decision shall be final ; and the amount of the said expenses and charge shall be recovered by the Commissioners as damages."

The interpretation of "owner" in section 4, Public Health Act, 1875, applies to this section. The occupier of the buildings destroyed is not liable for expenses incurred by the brigade.<sup>1</sup> The brigade employed at a fire are lawfully in charge of the premises and may exclude the public.<sup>2</sup>

### *The Water Rate.*

The charges made for water supplied to consumers are called the "water rate." Such charges are payable by those who agree to take the water, whereas the obligation to pay local rates is imposed by law.

By the Public Health Act, 1875, section 56 :—

"Where a Local Authority supply water to any premises they may charge in respect of such supply a water rate to be assessed on the net annual value of the premises ascertained by the valuation list for the time being in force ;

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<sup>1</sup> *Sale v. Phillips*, 1894, 1 Q.B. 349.

<sup>2</sup> *Carter v. Thomas*, 1893, 1 Q.B. 673.

moreover they may enter into agreements for supplying water on such terms as may be agreed on between them and the persons receiving the supply, and shall have the same powers for recovering water rents or other payments accruing under such agreements as they have for recovering water rates."

It is not obligatory on the District Council to defray expenditure incurred about the supply of water by means of a water rate; it may be defrayed as part of the general expenses of the district, but where a separate water rate is levied it must be assessed on the net annual value of premises supplied and based on an estimate for the sum necessary for the maintenance of the district waterworks and cost of supply. The Council are not entitled to make a profit out of the consumers.<sup>1</sup>

The Public Health (Water) Act, 1878, affords a means of compelling a District Council to levy a water rate. Section 10 is as follows :—

"10. Where a District Council under the provisions of the Public Health Act, 1875, as amended by this Act, supply water in any Urban District or in any contributory place, and an application is made to them by any ten persons rated to the relief of the poor in such Urban District or by any five persons so rated in such contributory place, to charge water rates or water rents in respect of the water so supplied, it shall be incumbent upon the authority to exercise the powers given to them by the Public Health Act, 1875, and by this Act, of charging water rates or water rents in respect of all water supplied by them in such Urban District or in such contributory place."

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<sup>1</sup> Worcester Corp. v. Droltwich Ass. Comm., 1876, L.R., 2 Ex. D. 49.

The effect of such a requisition is to transfer all the expense of water supply from the ratepayers of the district to the consumers. The cost of all water supplied to consumers must be recouped by a rate, not only the cost of water supplied to the requisitioners. In Rural Districts the cost of water supply is defrayed as a special expense. The rate is due in advance. A formal demand is not necessary when the consumer knows the amount he has to pay.<sup>1</sup> The Council appoint their own collectors, who must recover the rates within six months from the time they become due.<sup>2</sup>

The rate is assessed on the net annual value of a residence, including the gardens occupied subser- viently to the dwelling-house.<sup>3</sup> Premises hired from several owners by a consumer are included in one assessment, *e.g.*, stable occupied with a dwelling- house.<sup>4</sup> The first payment is due when the service pipe is connected with the main or when the agree- ment to take water is made (section 70, Wks. Cl. Act, 1847). Section 71 of the Waterworks Clauses Act, 1847, provides for the payment of the rates when the supply is discontinued.

“Section 71.—The occupier of any dwelling-house or part of a dwelling-house liable to the payment of any water rate, who shall give notice of his intention to discontinue the use of the water supplied by the undertakers, or who shall remove

<sup>1</sup> East London Wks. v. Kiffin, 1895, 1 Q.B. 55.

<sup>2</sup> East London Wks. v. Charles, 1894, 2 Q.B. 733.

<sup>3</sup> Grand Junction v. Davies, 1897, 13 T.L.R. 489.

<sup>4</sup> Swan v. Fleming, 1899, 81 L.T. 202.

from his dwelling between any two quarterly days of payment, shall pay the water rate in respect of such dwelling-house or part of a dwelling-house, for the quarter ending on the quarterly day of payment next after his quitting the same or giving such notice."

Owners of houses of 10*l.* annual value are responsible as consumers for the rate for water supplied to such houses. Section 72 enacts :—

"The owners of all dwelling-houses or parts of dwelling-houses occupied as separate tenements, the annual value of which houses or tenements shall not exceed the sum of ten pounds, shall be liable to the payment of the rates instead of the occupiers thereof; and the powers and provisions herein or in the special Act contained for the recovery of rates from occupiers shall be construed to apply to the owners of such houses and tenements; and the person receiving the rents of any such house or tenement as aforesaid from the occupier thereof, on his own account, or as agent or receiver for any person interested therein, shall be deemed the owner of such house or tenement.

"Where any consumer neglects to pay the water rate at any of the times of payment thereof, the Council may stop the water from flowing into the premises in respect of which such rate is payable, by cutting off the pipe to such premises, or by such means as the Council shall think fit, and may recover the rate due from such person with the expenses of cutting off the water and costs of recovering the rate (section 74)."

The Water Companies (Regulation of Powers) Act, 1887, which applies to every water company being a trading company, prohibits such companies from cutting off the supply for non-payment of the water rate, where the owner and not the occupier is liable by law or by agreement to the payment of the water rate in respect of any dwelling-house or part

of a dwelling-house occupied as a separate tenement. In such cases, the rate with 5 per cent. interest is charged on the house in priority to all other charges, and may (without prejudice to the charge) be recovered from the owner or occupier for the time being. The occupier is only liable to pay out of rent unpaid at the time he is notified of the non-payment of the rate. This enactment does not extend to a District Council except where they have a special Act empowering them to make profits or where supplying water for profit outside their own district.<sup>1</sup>

A water rate or other sum due in respect of water supply may be recovered by summary proceedings before Justices or in the County Court (section 74, W. Cl. Act, 1847; section 21, W. Cl. Act, 1863).

An excess water rate paid on a sum supposed to be the annual value of premises supplied, cannot be recovered from the Council.<sup>2</sup> And a plea that the supply of water has been deficient is not good cause for refusing to pay the rate.<sup>3</sup>

Agreements relating to the sale of goods under the value of 5*l.* are exempt from stamp duty; where water rent does not exceed that sum agreements for water supply do not require a stamp.<sup>4</sup> But above that sum an agreement for an annual supply must bear an *ad valorem* stamp.<sup>5</sup>

<sup>1</sup> See *Wolverhampton v. Bilston*, 1891, 1 Ch. 315.

<sup>2</sup> *Henderson v. Folkestone Wks.*, 1885, 1 T.L.R. 329.

<sup>3</sup> Compare *Clegg v. Farby Gas Co.*, 1896, 1 Q.B. 392; *Richmond Gas Co. v. B. of R.*, 1893, 1 Q.B. 56.

<sup>4</sup> *W. Middx. Wks. v. Sowerkrop*, 1829, 4 C. and P. 87; *Gurr v. Scudds*, 1855, 11 Ex. 190.

<sup>5</sup> *Natl. Telephone Co. v. I.R.*, 1899, 1 Q.B. 250; 1900, 16 T.L.R., 58.

*Compulsory Supply.*

The District Council are empowered to obtain an order from the Justices for closing polluted wells and cisterns, public or private, used for domestic purposes, or in the manufacture of aerated drinks. The owner or occupier may be made liable for expenses incurred, and in a Rural District they may, if not so recovered, be defrayed as special expenses. An analysis may be ordered by the Court. Section 62 of the Public Health Act, 1875, enacts:—

“Where, on the report of the Surveyor of a Local Authority, it appears to such Authority that any house within their district is without a proper supply of water, and that such a supply of water can be furnished thereto at a cost not exceeding the water rate authorised by any local Act in force within the district, or where there is not any local Act so in force, at a cost not exceeding twopence a week, or at such other cost as the Local Government Board may, on the application of the Local Authority determine under all the circumstances of the case to be reasonable, the Local Authority shall give notice in writing to the owner, requiring him, within a time therein specified, to obtain such supply, and to do all such works as may be necessary for that purpose.

“If such notice is not complied with within the time specified, the Local Authority may, if they think fit, do such works and obtain such supply, and for that purpose may enter into any contract with any water company supplying water within their district; and water rates may be made and levied on the premises by the authority or company which furnishes the supply, and may be recovered as if the owner or occupier of the premises had demanded a supply of water and were willing to pay water rates for the same, and any expenses incurred by the Local Authority in doing any



such works may be recovered in a summary manner from the owner of the premises, or may, by order of the Local Authority, be declared to be private improvement expenses."

Where an application is made to the Local Government Board under section 62, the Board may fix a general scale of charges for the whole of the district (section 8, P.H. (Water) Act, 1878). The amount of expenses recoverable from the owner is not limited.<sup>1</sup>

The Public Health Act, 1875, imposes on Local Authorities a duty to supply their district with wholesome water, and the Public Health (Water) Act, 1878, imposes on a Rural District Council the duty to see that every occupied house has within a reasonable distance a supply of water for domestic use, and prohibits the occupancy of a new dwelling-house in a Rural District until the Council have granted a certificate that there is provided within a reasonable distance of the house an available supply of wholesome water (sections 6, 7, and 8, P.H. (Water) Act, 1878). Where the insufficiency of the existing supply is suspected the Council may authorise their officer to inspect premises. If admission is denied a Justice's order must be obtained (section 102, P.H. Act, 1875).

The Public Health (Water) Act, 1878, section 3, is as follows :—

"3. It shall be the duty of every Rural District Council, regard being had to the provisions in this Act contained,

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<sup>1</sup> West Lancs. R.D.C. v. Ogilvy, 1899, 1 Q.B. 379.



to see that every occupied dwelling-house within their district has within a reasonable distance an available supply of wholesome water sufficient for the consumption and use for domestic purposes of the inmates of the house.

“Where it appears to a Rural Sanitary Authority, on the report of their inspector of nuisances, or their Medical Officer of Health, that any occupied dwelling-house within their district has not such supply within a reasonable distance, and the Authority are of opinion that such supply can be provided at a reasonable cost not exceeding a capital sum the interest on which at the rate of five per centum per annum would amount to twopence per week, or at such other cost not exceeding a capital sum the interest on which at the rate of five per centum per annum would amount to threepence per week, as the Local Government Board may on the application of the Local Authority determine under all the circumstances of the case to be reasonable, and that the expense of providing the supply ought to be paid by the owner or defrayed as private improvement expenses, proceedings may be taken as follows :—

“(1.) The Authority may serve on the owner of the house a notice requiring him, within a time specified in the notice and not exceeding six months from the date of the service thereof, to provide such supply, and to do all such works as may be necessary for that purpose.

“(2.) If at the expiration of the time so specified the notice is not complied with, the Authority may serve on the owner a second notice informing him that if the requirements of the first notice are not complied with within one month from the date of the service of the second notice, the Authority will themselves provide such supply, and that the expense of providing the supply, will, in that case, be payable by the owner, or as a private improvement expense.

“(3) If at the expiration of one month from the date of the service of the second notice the requirements of the first notice are not complied with, the Authority may, subject as in this Act is mentioned, themselves provide the supply, and for that purpose they may enter upon the premises and execute all such works as appear to them necessary for obtaining a supply of water for the house, and for the purposes of such entry sections 102 and 103 of the Public Health Act, 1875,<sup>1</sup> shall apply until the works are completed, in the same manner as if an Order of a Court of Summary Jurisdiction had been made for the abatement of a nuisance on the premises, and that Order had not been complied with.

“(4.) Any expenses incurred by the Authority in providing such supply and doing such works may, when the supply has been provided, be recovered in a summary manner from the owner of the house, or may, at the option of the Authority, be declared, by their order, to be private improvement expenses.”

Where several owners have been notified works may be executed to furnish a joint supply. The Act of 1878 is supplementary to section 62, Public Health Act, 1875, so the Rural Council can act under which Act they think fit, but under the Act of 1878, the amount of expenditure recoverable from the owners is limited. For the purpose of providing a water supply to part of a parish, the Rural District Council can, with the approval of the Local Government Board, resolve to constitute such area a special drainage district pursuant to section 277, Public Health Act, 1875, and defray any expenditure in-

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<sup>1</sup> These sections relate to the power of entry.

curring as special expenses. If the expenditure is declared to be a private improvement expense, it will be recouped by means of a private improvement rate on the occupiers sufficient to discharge the expenses with five per cent. interest thereon, within a period not exceeding 30 years (sections 213-15, Public Health Act, 1875). The occupiers are entitled to deduct three-fourths of such rate from their rents, and, if the premises are void before such expenses are fully paid, they become a charge on the owner. Private improvement rates are redeemable at any time by the owner or occupier of the premises assessed.

Where in a Rural District an owner is requisitioned to provide a supply of water to a house he is entitled to notify the Rural Council, within 21 days after service on him of the second notice, that he objects to the execution of the works on any of the following grounds :—

- (1.) That the supply is not required ; or
- (2.) That the time limited by the notice for providing the supply is insufficient ; or
- (3.) That it is impracticable to provide the supply at a reasonable cost ; or
- (4.) That the authority ought themselves to provide a supply of water for the district or contributory place in which the house is situate, or to render the existing supply of water wholesome ; or

- (5.) That the whole or part of the expense of providing the supply, or of rendering the existing supply wholesome, ought to be a charge on the district or contributory place.

If the owner raises either the fourth or fifth objection the matter must be referred to the Local Government Board for decision. The first three objections if raised are to be decided by a Court of Summary Jurisdiction. The Local Government Board can confirm the requisition or modify it or make an order for apportionment of the expenditure between the owner and the Council or other persons, or may treat the objections as a complaint of default of the Council to furnish a supply of water to their district or parts of it under section 299, Public Health Act, 1875. Where joint notices have been served by the Council any owner may contest the fairness of the apportionment of the expenses determined by the Justices.

Where a supply of water is furnished by means of standpipes and no water rate or rent is charged on the consumers, the cost of water supply will be defrayed as special expenses in the contributory place. Section 9 of the Public Health (Water) Act, 1878, enacts :—

“9. Where a Rural District Council have provided a stand-pipe or stand-pipes for the supply of water to any portion of their district, they may recover water rates or water rents from the owner or occupier of every dwelling-house within 200 feet of any such stand-pipe, in the same manner in all respects as if the supply had been given on the premises.

"Provided that if any such dwelling-house has, within a reasonable distance, and from other sources, a supply of wholesome water sufficient for the consumption and use of the inmates of the house, no water rate or water rent shall be recoverable from the owner or occupier of the house unless and until the water supplied by the Authority by means of such stand-pipes is used by inmates of the house."

All public wells of water within Urban or Rural Districts which have been used gratuitously by the inhabitants at large vest in the District Councils. This is so where the source of supply is on private property.<sup>1</sup> Section 64, Public Health Act, 1875, is as follows :—

"64. All existing public cisterns, pumps, wells, reservoirs, conduits, aqueducts, and works used for the gratuitous supply of water to the inhabitants of the district of any Local Authority, shall vest in and be under the control of such Authority, and such Authority may cause the same to be maintained and plentifully supplied with pure and wholesome water, or may substitute, maintain, and plentifully supply with pure and wholesome water, other such works equally convenient; they may also (subject to the provisions of this Act) construct any other such works for supplying water for the gratuitous use of any inhabitants who choose to carry the same away, not for sale, but for their own private use."

A pond which has for a long time been used by the public for watering horses vests in the District Council.<sup>2</sup>

District Councils are not entitled to grant, for profit, rights to take water flowing from such public wells.<sup>3</sup> If it can be proved that a public well existed when the Public Health Act, 1875, came into force,

<sup>1</sup> *Smith v. Archibald*, 1880, 5 A.C. 489.

<sup>2</sup> *Leadgate L.B. v. Bland*, 1881, 45 J.P. 520.

<sup>3</sup> *Mostyn v. Atherton*, 1899, 2 Ch. 36.

it vests in the District Council, who are enabled to sue in their own name for damages for interference with it, although no proof of injury to the public rights; but for interfering with access to the well the Council would have to obtain the fiat of the Attorney-General before commencing an action.<sup>1</sup> Public rights of drawing water are not based on prescription, or on local customs; they arise from dedication to the public use by landowners.<sup>2</sup>

For rating purposes, waterworks of Local Authorities are valued like other rateable property. The question is, what rent will a tenant give.

The effect of the Public Health Acts is that the water rates levied are to be sufficient to cover the costs incurred about the supply and no more. No management will yield a profit, so no tenant will take the works rent free; therefore the assessment is "nil." The rule of law is thus summed up:—

"Where land is occupied by a Local Authority for public purposes, the land is to be assessed to the poor rate at the rent which a tenant would pay, if subject to the same restrictions as are imposed, and entitled to the same advantages as are conferred upon the Local Authority."<sup>3</sup>

A Local Authority in some instances carries on the business of supplying water to adjoining parishes, and in such case the method of valuation is to find

<sup>1</sup> *Holmfirth L.B. v. Shore*, Q.B.D., 26th April 1895.

<sup>2</sup> *Dungarvon v. Mansfield Gdns.*, 1897, 1 Ch. 420.

<sup>3</sup> *Dewsbury Waterworks v. Penistone Union*, 1886, 17 Q.B.D. 384; *M. of Peterboro' v. Stamford Union*, 1883, 31 W.R. 919.

what a person would give as rent to carry on the same business.<sup>4</sup>

Trading companies with waterworks are rateable for the land occupied by their works, mains, and pipes placed under highways or through private property where the companies do not own the soil. In *R. v. Chelsea Waterworks Company*,<sup>2</sup> the company were rated for their pipes laid under the soil of Green Park, the Ranger of the park being rated for the surface. The right to place pipes in land though in nature of an easement requires exclusive possession of the space filled by the pipes, hence they are rateable (a wayleave for underground conduits of water is rateable as land).<sup>3</sup> The company are rated in the parish where reservoirs, buildings, engines, and premises are situate, as on land and buildings with fixtures and machinery attached, and deriving additional value from being applied to purposes of a water company; such additional value being derived from the exchangeable value of the whole undertaking, and not by reference to receipts earned in another parish, which are assumed to be sufficient to pay for all outgoings, including profits on capital.<sup>4</sup> Dead mains, *i.e.*, mains which are only used as conduit pipes to profit-earning pipes in another parish, are rated on a basis of cost of construction; in parishes where mains earn profits they are there

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<sup>1</sup> *R. v. Birmingham Gas Co.*, 1823, 1 B. and C. 506.

<sup>2</sup> 1833, 5 B. & Ad., 156.

<sup>3</sup> *Corp. of Glasgow v. McEwen*, 1901, A.C. 91.

<sup>4</sup> *Q. v. West Middx. Waterworks*, 1859, 1 E. & E. 716.



reckoned in the valuation ; not where profits are received.<sup>1</sup>

## STREAMS.

### *Pollution—Riparian Rights—Casting Rubbish in.*

District Councils are empowered by sections 16 and 17, Public Health Act, 1875, to discharge the drainage of their district into any natural or artificial stream or watercourse, canal, pond, or lake within their district, provided the water or liquid so discharged does not contain sewage or foul or noxious matter. The surface water conveyed from the roads of the district may be so discharged, although it carries sand and matter which may choke the flow of the stream. Those who have rights in the stream can claim compensation from any loss they sustain.<sup>2</sup>

Riparian rights are incidental to ownership of the bank of a natural stream, they do not accrue by user. In artificial streams rights are derived from a grant or from long user from which it may be presumed.<sup>3</sup>

Riparian owners have a right to use water for the ordinary purposes of life and business, so long as they do not by abstraction diminish the flow of water to the detriment of other owners. A statutory body or a railway company, who do not want water for ordinary purposes, are not entitled to abstract it from a stream for statutory purposes.<sup>4</sup>

<sup>1</sup> *R. v. Jolliffe*, 2 T.R. 95.

<sup>2</sup> *Durrant v. Branksome U.D.C.*, 1897, 2 Ch. 291.

<sup>3</sup> *Ramshur Singh v. Koong*, 1878, 4 A.C., 121.

<sup>4</sup> *A.G. v. G.E. Ry.*, 1871, L.R., 6 Ch. 372.



“Section 17. Nothing in this Act shall authorise any Local Authority to make or use any sewer, drain, or outfall, for the purpose of conveying sewage or filthy water into any natural stream or watercourse, or into any canal, pond, or lake, until such sewage or filthy water is freed from all excrementitious or other foul or noxious matter such as would affect or deteriorate the purity and quality of the water in such stream or watercourse, or in such canal, pond, or lake.”

Sewer effluents must be purified of all putrid matter, but solid matter may be discharged provided it is not putrid at the time.<sup>1</sup>

It has been held that sludge in suspension is not solid putrid matter. The fouling of a stream by sewage is not a matter for compensation pursuant to section 308, Public Health Act, 1875, the unauthorised conveyance of sewage into a stream may be stopped at the instance of any riparian owner, by injunction from the High Court,<sup>2</sup> and long continuance of pollution cannot be pleaded to justify a public nuisance.

Sewage pollution of streams is also prohibited by the Rivers Pollution Prevention Acts, 1876 to 1893. “Streams” in these Acts is interpreted to include the sea to such extent and tidal waters to such point, as may, on sanitary ground, be determined by the Local Government Board.

The Rivers Pollution Prevention Act, 1893, enacts that—

“Where any sewage matter falls or flows, or is carried into any stream after passing through or along a channel which is

<sup>1</sup> *River Ribble Comm. v. Halliwell*, 1899, 1 Q.B. 31.

<sup>2</sup> *Oldacre v. Hunt*, 1854, 19 Beavan, 485.

vested in a District Council, the District Council shall, for the purposes of section 3, Rivers Pollution Prevention Act, 1876, be deemed to knowingly permit the sewage matter so to fall, flow, or be carried."

Section 3 of the Rivers Pollution Prevention Act, 1876, is as follows :—

"3. Every person who causes to fall or flow, or knowingly permits to fall or flow, or to be carried into any stream, any solid or liquid sewage matter, shall (subject as in this Act mentioned) be deemed to have committed an offence against this Act."

"Where any sewage matter falls or flows, or is carried into any stream along a channel used, constructed, or in process of construction, at the date of the passing of this Act for the purpose of conveying such sewage matter, the person causing or knowingly permitting the sewage matter so to fall or flow, or to be carried, shall not be deemed to have committed an offence against this Act if he shows to the satisfaction of the court having cognizance of the case that he is using the best practicable and available means to render harmless the sewage matter so falling or flowing or carried into the stream.

"Where the Local Government Board are satisfied after local inquiry that further time ought to be granted to any District Council which at the date of the passing of this Act is discharging sewage matter into any stream, or permitting it to be so discharged, by any such channel as aforesaid, for the purpose of enabling such authority to adopt the best practicable and available means for rendering harmless such sewage matter, the Local Government Board may by order declare that this section shall not, so far as regards the discharge of sewage matter by such channel, be in operation until the expiration of a period to be limited in the order.

"Any order made under this section may be from time to time renewed by the Local Government Board, subject to such conditions, if any, as they may see fit.

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\* By the Rivers Pollution Prevention Act, 1893, section 1, where a sewer discharges sewage into a stream the Council are to be deemed to knowingly permit.

"A person, other than a District Council, shall not be guilty of an offence under this section in respect of the passing of sewage matter into a stream running along a drain communicating with any sewer belonging to or under the control of any District Council, provided he has the sanction of the District Council for so doing."

A certificate of an inspector of the Board will be conclusive as to the best practicable means (section 12 R.P.P. Act, 1876). Sections 27 to 31, Public Health Act, 1875, relate to the storing, disinfecting, disposing, and utilization of sewage by Local Authorities. Where storage works and filter beds are established the effluent must be free from sewage matter before being discharged into a stream.

The last paragraph of section 3 protects owners, who in pursuance of plans sanctioned by the District Council, construct drains from a number of houses, and an intercepting drain, with which each house drain is connected, which carries sewage into a stream.<sup>1</sup> Such an intercepting drain is a sewer vested in the Council.

Drainage of noxious liquids from manufactories and from mines into streams is prohibited by sections 4 and 5 of the Act, but legal proceedings in respect of such pollution can only be taken by a Local Authority with the sanction of the Local Government Board. Subject to restrictions imposed by the Act, District Councils or other persons aggrieved by the commission of an offence may institute legal proceedings. Offences are restrained by summary order of a County

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<sup>1</sup> *Ferrand v. Hallas Land Co.*, 1893, 2 Q.B. 135.

Court, from which an appeal lies to the High Court, or the case may be removed from the County Court by order of a Judge of the High Court (sections 8, 9, and 10 R.P.P. Act, 1876).

Under section 7 of the Act of 1876, facilities can be obtained for the discharge of innocuous factory liquids into existing sewers :

"Section 7. Every District Council having sewers under their control shall give facilities for enabling manufacturers within their district to carry the liquids proceeding from their factories or manufacturing processes into such sewers :

"Provided that this section shall not extend to compel any District Council to admit into their sewers any liquid which would prejudicially affect such sewers or the disposal by sale, application to land, or otherwise, of the sewage matter conveyed along such sewers, or which would from its temperature or otherwise be injurious in a sanitary point of view :

"Provided also, that no District Council shall be required to give such facilities as aforesaid where the sewers of such authority are only sufficient for the requirements of their district, nor where such facilities would interfere with any order of any court of competent jurisdiction respecting the sewage of such authority."

Where owners allege that existing sewers are not sufficient for the drainage of the district, the default must be remedied by complaint made to the Local Government Board pursuant to section 299, Public Health Act, 1875 ; but, where existing sewers are sufficient, the owners of a factory can enforce their rights in the County Court.<sup>1</sup>

A penalty of 200*l.* is imposed on gas companies and others engaged in the manufacture of gas who

<sup>1</sup> *Peebles v. Osbaldtwistle* U.D.C., 1897, 1 Q.B. 381, per Charles J., who was not reversed on this point in *Passmore v. Osbaldtwistle* U.D.C., 1898, A.C. 397.

cause the pollution of water by gas washings. This applies to streams, reservoirs, aqueducts, ponds, or place for water (section 68, P.H. Act, 1875).

Section 332, Public Health Act, 1875, contains a saving clause for the protection of water rights :—

“332. Nothing in this Act shall be construed to authorise any Local Authority to injuriously affect any reservoir, canal, river, or stream, or the feeders thereof, or the supply, quality, or fall of water, contained in any reservoir, canal, river, or stream, or in the feeders thereof, in cases where any body of persons or person would, if this Act had not passed, have been entitled by law to prevent or be relieved against the injuriously affecting such reservoir, canal, river, stream, feeders, or such supply, quality, or fall of water, unless the Local Authority first obtain the consent in writing of the body of persons or person so entitled as aforesaid.”

If water rights are injuriously affected without the requisite consent, the remedy is by injunction or by action for damages.<sup>1</sup> A riparian owner has a right to enjoy the flow of a stream without alteration, and an injunction will be granted to protect that right although he suffers no appreciable damage.<sup>2</sup>

Section 2 of the Rivers Pollution Act, 1876, enables the Council to prevent the fouling of a stream or interference with its flow by casting in rubbish. A more effectual remedy is available where the Public Health Acts Amendment Act, 1890,

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<sup>1</sup> *Reg. v. Darlington*, 1865, O.B. & S. 562.

<sup>2</sup> *Roberts v. Gwrfar D.O.*, 1899, 2 Ch. 608.

Part III., is in force. A penalty is imposed where any matter likely to cause annoyance is thrown into a stream.

Section 47 of the Act is as follows :—

“47.—(1.) It shall not be lawful for any person to throw or place or suffer to be thrown or placed into or in any river, stream, or watercourse within any district in which this part of this Act is adopted, any cinders, ashes, bricks, stone, rubbish, dust, filth, or other matter which is likely to cause annoyance.

“(2.) Every person offending against this enactment shall be liable to a penalty not exceeding forty shillings for every such offence.”

This provision will enable the Council to stop the discharge into streams of factory effluents which contain fine powdered matter held in suspension.<sup>1</sup>

Section 327, Public Health Act, 1875, protects rivers and navigations and water supplying them from interference by a District Council without consent of the proprietors of the navigation, and section 332 saves all water rights from the injurious effects of works of the District Council unless the persons entitled to such rights first give their consent in writing. An alleged interference by the District Council with a stream may be made the subject of an arbitration at the instance of the party complaining (Public Health Act, 1875, section 333). In addition to the remedies afforded by the Rivers Pollution Acts the District Council, with the sanction of

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<sup>1</sup> See *United Alkali Co. v. Simpson*, 1894, 71 L.T. 268.

the Attorney-General, may proceed by indictment, action, or otherwise, for the purpose of protecting any watercourse within their district from pollutions arising from sewage either within or without their district (*Ib.*, section 69).



## CHAPTER 4.

## SEWERS.

*Sewerage—Vesting of Sewers—Sewers for Profit—  
Nuisances caused by—Factory Effluents—  
Support of Minerals—Pollution of Streams.*

The distinction between sewers and drains will never be settled. The interpretation of drain and sewer given in section 4, Public Health Act, 1875, must be applied to the circumstances of the case in hand. All sewers vest in and are under the control of the District Council, but the vesting of street sewers must be preceded by an approval of the Council.<sup>1</sup> Sewers made for house drainage vest whether the Council know of their existence or not; hence the unauthorised connection of drainage of one house or of a stable with the drain from another converts it into a sewer for the maintenance of which the Council are responsible.<sup>2</sup>

The statutory descriptions of drain and sewer are as follows :—

“ ‘ Drain ’ means any drain of and used for the drainage of one building only, or premises within the same curtilage, and made merely for the purpose of communicating therefrom

<sup>1</sup> Handsworth L.B. v. Taylor, 1894, 69 L.T. 798; Handsworth v. Der-  
rington, 1897, 2 Ch. 438.

<sup>2</sup> Green v. Newington, 1898, 2 Q.B.; Holland v. Lazarus, 1897, 66 L.J. 285.



with a cesspool or other like receptacle for drainage, or with a sewer into which the drainage of two or more buildings or premises occupied by different persons is conveyed.

“ ‘Sewer’ includes sewers and drains of every description, except drains to which the word ‘drain’ interpreted as afore-said applies, and except drains vested in or under the control of any authority having the management of roads and not being a Local Authority under this Act.”

If sewer includes drains of every description except drains used for the drainage of one building only, it ought not to be difficult to determine what drains are included in the term “sewer.” Where the drainage of a row of houses is conveyed to a sewer by one drain to which each house is connected, that drain is a sewer vested in the Council,<sup>1</sup> but where such combined drainage merely serves to collect sewerage in a cesspool, the Courts have decided that it does not vest in the Council on the ground that the use of a sewer is to carry sewerage away, and that a set of pipes leading nowhere is not a sewer which the Council are bound to cleanse.<sup>2</sup> This decision has been followed in other cases,<sup>3</sup> so it must be taken to be the law of the land. Applying this rule to combined drainage from a row of houses, if the drain end in a cesspool the Council are not bound to abate a nuisance caused by disrepair or insufficiency of the drain, but if it is connected with a stream or a public sewer it is a sewer, and the Council must maintain it. Directly sewage passes

<sup>1</sup> *Travis v. Uttley*, 1893, 1 Q.B. 233.

<sup>2</sup> *Meador v. West Cowes L.B.*, 1892, 3 Ch. 18.

<sup>3</sup> *Button v. Tottenham Urban District Council*, 1898, 78 L.T. 470.

into a sewer the property in it is taken away from the landowner who made the sewer and is vested in the Council, who thereafter control it.<sup>1</sup>

To avoid contests about the vesting of sewers laid in private property, the Council can compel owners to make a separate drain for each house; but from two semi-detached houses under one roof are deemed to be one building, and the drains if joined are not a sewer.

By adopting Part 3 of the Public Health Acts Amendment Act, 1890, the Council can, in some cases east expenses incurred about the abatement of nuisances caused by combined drains on the owners of property.

Section 19 of the Act of 1890 is as follows :—

“(1.) Where two or more houses belonging to different owners are connected with a public sewer by a single private drain, an application may be made under section 41 of the Public Health, 1875 (relating to complaints as to nuisances from drains), and the Local Authority may recover any expenses incurred by them in executing any works under the powers conferred on them by that section from the owners of the houses in such shares and proportions as shall be settled by their surveyor or (in case of dispute) by a court of summary jurisdiction.

“(2.) Such expenses may be recovered summarily or may be declared by the Urban Authority to be private improvement expenses under the Public Health Acts and may be recovered accordingly.

“(3.) For the purposes of this section the expression ‘drain,’ includes a drain used for the drainage of more than one building.”

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<sup>1</sup> *Ferrand v. Hallas Land Co.*, 1893, 2 Q.B. 140.

<sup>2</sup> *Hedley v. Webb*, 1901, 17 T.L.R. 393.

Section 41, Public Health Act, 1875, will be found under the heading "Drains."

The adoption of the Act of 1890 will enable the Council to apply section 19 to the abatement of drainage nuisances in all cases where the private drains are used by different owners whether made before or after the adoption of the Act.<sup>1</sup> Private drain means one made in private ground and which the public are not entitled to use.<sup>2</sup> To entitle the Council to enforce section 19 against the owners of property drained, the application in writing of an existing nuisance must be made by an officer of the Council or other person.<sup>3</sup>

A joint notice to owners is good, although neither can lay drains without trespassing.<sup>4</sup>

The vesting of sewers in the District Council does not give them property in the soil in which sewers are laid, but only such rights as are necessary to enable them to exercise their statutory powers and duties. Sewers being vested in the Council, they can protect their rights by action like ordinary proprietors, without having recourse to the Attorney-General whose sanction is necessary where the law is asserted on behalf of public interests, nor is it necessary to prove special damage where the Council assert a statutory right.<sup>5</sup>

<sup>1</sup> *M. of Eastbourne v. Bradford*, 1896, 2 Q.B. 205.

<sup>2</sup> *Seal v. Merthyr Tydfil*, 1897, 2 Q.B. 543.

<sup>3</sup> *Q. v. M. of Hastings*, 1897, 1 Q.B. 46.

<sup>4</sup> *Lancaster v. Barnes U.D.C.*, 1891, 1 Q.B. 855.

<sup>5</sup> *Holt v. Rochdale Corporation*, 1870, L.R., 10 Eq. 354.

Section 13, Public Health Act, 1875, is as follows :—

“13. All existing and future sewers within the district of a Local Authority, together with all buildings, works, materials and things belonging thereto,

“Except—

“(1.) Sewers made by any person for his own profit, or by any company for the profit of the shareholders ; and

“(2.) Sewers made and used for the purpose of draining, preserving, or improving land under any local or private Act of Parliament, or for the purpose of irrigating land ; and

“(3.) Sewers under the authority of any Commissioners of Sewers appointed by the Crown,

shall vest in and be under the control of such Local Authority.

“Provided that sewers within the district of a Local Authority which have been or which have been or which may hereafter be constructed by or transferred to some other Local Authority or by a sewage board or other authority empowered under any Act of Parliament to construct sewers shall (subject to any agreement to the contrary) vest in and be under the control of the authority who constructed the same or to whom the same has been transferred.

Gullies, grids, and manholes vest as part of the sewers, so the Council must see that they do not fall into disrepair and cause inconvenience to passengers. It has not been found easy to ascertain what sewers are made for profit within the exception of section 13. Profit is not limited to a direct money payment, but sewers made by owners for the purpose of drainage

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<sup>1</sup> White v. Hindley L.B., 1875, L.R., 10 Q.B. 219.

houses on their own estates are not made for profit<sup>1</sup>; and this is so even where an estate is developed by a company for the benefit of shareholders<sup>2</sup>; but a sewer made, not as a passage for sewage, to enable land to be profitably used or to avoid an expenditure connected with the occupancy of the land is made for profit, and does not vest in the Council<sup>3</sup>; nor do drains made to collect surface water in one channel so as to protect a quarry from flooding<sup>4</sup>; and if the Council connect a drain therewith they may have to pay damages and will be restrained from so doing by injunction. Sewers made to carry sewage do not vest where constructed at the cost of an owner and maintained by a voluntary rate by those who use them. In *Minehead L.B. v. Luttrell*, 1894, 2 Ch. 178, the lord of the manor in 1878, when there was no public system of sewerage, laid sewers at his own cost for the house drainage of the town of Minehead, and the occupiers in the town contributed to a voluntary rate for the convenience. The Local Board formed in 1891 alleged that this private sewerage system vested in them pursuant to section 13, Public Health Act, 1875, and brought an action for a declaration of their rights to appropriate the works, but the Court held that such sewers were made for private profit. This decision does not apply to the case of sewerage of a building estate

<sup>1</sup> *Acton L.B. v. Batten*, 1884, 24 Ch.D. 283.

<sup>2</sup> *Ferrand v. Halls Land Co.*, 1893, 2 Q.B. 135.

<sup>3</sup> *Croysdale v. Sunbury-on-Thames*, 1898, 2 Ch. 515.

<sup>4</sup> *Sykes v. Sowerby U.D.C.*, 1900, 1 Q.B. 585.

where the owner recoups himself for his expenditure on sewers by a charge on lessees who erect houses.<sup>1</sup>

Subsection 2 of section 13 excepts sewers made by Commissioners of Sewers in connection with land drainage and drains made pursuant to the Inclosure Acts. The discharge of house sewage into such drains does not convert them into sewers, which vest in the Council.<sup>2</sup> What extent of pollution operates to vest a stream in the Council depends on the circumstances of each case. The period for which a stream has been utilized as a passage for sewage is a test.<sup>3</sup> In *Falconer v. South Shields*,<sup>4</sup> sewage from 150 cottages had for many years been discharged into a natural stream passing through a farm. This was enough to vest the polluted course of the stream in the Council, and to entitle them to cover it in. Artificial drainage works made by a railway company, though in fact used for carrying sewage, are excepted as sewers made for the purpose of draining land under a local Act.<sup>5</sup>

Section 14, Public Health Act, 1875, enables a District Council to purchase sewers or to accept gifts of such being within their district, and section 15 imposes an absolute duty to effectually drain their

<sup>1</sup> *Vowles v. Colmer*, 1895, 72 L.T. 389.

<sup>2</sup> *Reg. v. Godmanchester*, 1866, L.R., 1 Q.B. 328.

<sup>3</sup> *Wheatcroft v. Matlock L.B.*, 1885, 52 L.T. 356.

<sup>4</sup> 1895, 11 T.L.R. 223.

<sup>5</sup> *L.N.W. Ry. v. Runcorn R.D.C.*, 1898, 1 Ch. 34.

district, with a discretion as to the method of so doing.<sup>1</sup>

“15. Every Local Authority shall keep in repair all sewers belonging to them, and shall cause to be made such sewers as may be necessary for effectually draining their district for the purposes of this Act.”

The Council are empowered to make separate sewers for surface water. Whether in any case they ought to do so depends on local circumstances. Those who complain of the default of the Council have a remedy by complaint to the Local Government Board, pursuant to section 299, Public Health Act, 1875. The Board can make an Order commanding sewers necessary for drainage of the district to be made.<sup>2</sup> Where alleged nuisance arises from neglect to cleanse sewers, the remedy against the Council is by action for damages. Section 299 does not apply where sewers are sufficient for drainage of the district.<sup>3</sup> Overflow from sewers frequently comes from storm openers which are necessary to save the sewers from bursting. A person who suffers loss from such overflow would have no right of action. His remedy is by complaint to the Local Government Board for an order commanding an alteration in the system of sewerage<sup>4</sup>; but where overflow arises through neglect to remedy some defect, or by connecting a drain with a sewer which

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<sup>1</sup> *Q. v. L.C.C.*, 1899, 15 T.L.R. 89.

<sup>2</sup> *Robinson v. Mayor of Workington*, 1897, 1 Q.B. 388; *Peebles v. Osbaldtwistle U.D.C.*, 1897, 1 Q.B. 625.

<sup>3</sup> *Baron v. Portslade*, 1899, 15 T.L.R. 513.

<sup>4</sup> *Jones v. Barking U.D.C.*, 1899, 15 T.L.R. 92.



is insufficient to carry the sewage away, an action for damages is the remedy. Items of loss may include medical expenses, rental and expenses of removing a family.<sup>1</sup>

Proceedings in a Court of Summary Jurisdiction are not applicable to nuisances caused by sewerage works of a District Council. Section 91, Public Health Act, 1875, relates to nuisances arising from acts of owners of property. Where stencils issue from ventilators of sewers, the Local Government Board have power, where the nuisance arises from insufficiency of the sewers to order execution of effectual sewerage works.<sup>2</sup>

Where sewers cease to be used as drains, the District Councils are divested of their rights and powers, but a sewer when once vested in the Council does not become divested because no more than one drain is connected with it. The discontinuance of sewers is provided for by section 18, Public Health Act, 1875 :

“Section 18. Any Local Authority may from time to time enlarge, lessen, alter the course of, cover in, or otherwise improve any sewer belonging to them, and may discontinue, close up, or destroy any such sewer that has in their opinion become unnecessary, on condition of providing a sewer as effectual for the use of any person who may be deprived in pursuance of this section of the lawful use of any sewer : Provided that the discontinuance, closing up, or destruction of any sewer shall be so done as not to create a nuisance.”

<sup>1</sup> *Dent v. Bournemouth Corporation*, 1897, L.J., 66 Q.B. 395 ; *Touzeau v. Slough U.D.C.*, 1896, 60 J.P. 103.

<sup>2</sup> *Reg. v. Parlbv.*, 1889, 22 Q.B.D. 520 ; *Fulham Vestry v. London C.C.*, 1897, 2 Q.B.D. 76.



The Support of Sewers Act, 1883, enacts that a District Council are not to be entitled to minerals under sewers or other sanitary works constructed by them unless they have purchased such minerals, but the minerals must not be worked if under or near the sewers without notification to the Council, who may elect to take the minerals, paying compensation for them. If the Council refuse to purchase the minerals the owners may work them in the usual mode.

The Act of 1883 applies only to support from mining land. In other cases landowners must preserve adequate subjacent and lateral support for public sewers crossing their land, and in respect of any loss incurred by reason of inability to use their land they can claim compensation.<sup>1</sup>

Section 16 of the Public Health Act, 1875, empowers the Council to make sewers through lands within their district :

“Section 16. Any Local Authority may carry any sewer through, across, or under any turnpike road, or any street or place laid out as or intended for a street, or under any cellar or vault which may be under the pavement or carriageway of any street and, after giving reasonable notice in writing to the owner or occupier (if on the report of the surveyor it appears necessary) into, through, or under any lands whatsoever within their district.

“They may also (subject to the provisions of this Act relating to sewage works without the district of the Local Authority) exercise all or any of the powers given by this section without their district for the purpose of outfall or distribution of sewage.”

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<sup>1</sup> *Re Corpn. of Dudley*, 1881, 8 Q.B.D. 86 ; *Roderick v. Aston* L.B., 1877, 5 Ch.D. 328.

The Surveyor of the Council appointed under section 189 of the Act is the person to determine that a sewer is necessary for the efficient discharge of their duty in the way most for the benefit of the public. If he reports in good faith the High Court will not interfere.<sup>1</sup> The sewers may be made under ground or above ground.<sup>2</sup>

The delivery of the Surveyor's report and the service of notice on the landowners or occupiers are conditions precedent to the right of the Council to enter the lands to execute the works. If the Council's officers are obstructed when they enter the lands the offenders should be summoned pursuant to section 306, Public Health Act, 1875.<sup>3</sup>

Tender of compensation money is not necessary, nor can any annual payment be demanded from the Council. The persons who suffer loss must make their claim for compensation pursuant to section 308, P.H. Act, 1875. It is a general rule of law that where public bodies have authority from Parliament to interfere with private property on certain terms any person whose property is interfered with by virtue of that authority has a right to require that the very letter of the enactment shall be complied with so far as it makes provision on his behalf, nor can any Court remodel arrangements sanctioned or relax conditions imposed by Parliament.<sup>4</sup>

<sup>1</sup> *Lewis v. Weston-super-Mare* L.B., 1888, 40 Ch.D. 55.

<sup>2</sup> *Rhoderick v. Aston* L.B., 1877, 5 Ch.D. 328.

<sup>3</sup> *M. of Hartlepool v. Robinson*, 1897, 45 W.R. 312.

<sup>4</sup> *Heron v. Bathmines* I.C., 1892, A.C. 498.

The duty to cleanse sewers is imposed by section 19, P.H. Act, 1875 :

“ Section 19. Every Local Authority shall cause the sewers belonging to them to be constructed, covered, ventilated, and kept so as not to be a nuisance or injurious to health, and to be properly cleansed and emptied.”

This statutory duty is fulfilled where the Council take reasonable care to supervise the cleansing and to provide against what may be ordinarily foreseen. They are responsible so far as good management can remedy choking up of sewers, or overflow of sewage or discharge of foul gases, but the duty is not absolute so as to make them liable under all circumstances to an action for damages.<sup>1</sup> A person claiming damages has to establish want of care in control of the sewers by the Council ; if the alleged default is to sufficiently exercise the statutory power to make enough sewers to effectually drain the district the remedy is by complaint to the Local Government Board pursuant to section 299, P.H. Act, 1875.

The Council are responsible for overflows where caused by negligent construction of a new sewer or connection of a drain to an existing sewer which is not sufficiently large to carry the additional drainage away.<sup>2</sup> But for overflows resulting from an extraordinary storm, which cannot be foreseen, they incur no responsibility.<sup>3</sup> Actions relating to nuisances caused by discharge of foul gases rarely succeed. Sewer gas is

<sup>1</sup> *Hammond v. St. Pancras*, 1874, L.R., 9 C.P. 316.

<sup>2</sup> *Brown v. Sargent*, 1858, 1 F. and F., 112.

<sup>3</sup> *Shelton's Brewery v. M. of Derby*, 1894, 1 Ch. 431.

uncontrollable. Where the Council had made a sewer shaft attached to a dwellinghouse, and had subsequently stopped the aperture in a negligent manner so that sewer gas escaped into the house and caused blood-poisoning, they had to pay damages.<sup>1</sup>

A map showing the course and situation of all sewers belonging to the Council must be made by the Council, and kept at their office, and may at all reasonable times be inspected by any ratepayer of the district (section 20, P.H. Act, 1875 ; section 3, Support of Sewers Act, 1883).

Liquids issuing from factories or manufacturing processes may be discharged into public sewers where such liquids do not interfere with the efficiency of the sewers for the drainage of the district, or do not injuriously affect the sewers or the utility of the sewage for application to land.<sup>2</sup> Where the discharge of factory effluents has been lawfully made from the first the Council cannot cut such drainage off.<sup>3</sup> They may have a remedy under the Public Health Acts Amendment Act, 1890. That Act imposes penalties on persons who cause injurious matters to flow into public sewers.

Sections 16 and 17 of Part 3 of the Act of 1890 are as follows :—

“ 16.—(1.) It shall not be lawful for any person to throw, or suffer to be thrown, or to pass into any sewer of a Local

<sup>1</sup> *Smith v. Kings Norton R.D.C.*, 61 J.P. 520.

<sup>2</sup> *Rivers Polluting Prevention Act*, 1876, section 7 ; *Pasmore v. Oswaldtwistle, U.D.C.*, 1896, A.C. 377.

<sup>3</sup> *Eastwood v. Henley U.D.C.*, 1900, 1 Ch. 781.

Authority or any drain communicating therewith, any matter or substance by which the free flow of the sewage or surface or storm water may be interfered with, or by which any such sewer or drain may be injured.

“(2.) Every person offending against this enactment shall be liable to a penalty not exceeding ten pounds, and to a daily penalty not exceeding twenty shillings.

“17.—(1.) Every person who turns or permits to enter into any sewer of a Local Authority or any drain communicating therewith—

“(a.) Any chemical refuse, or

“(b.) Any waste steam, condensing water, heated water, or other liquid (such water or other liquid being of a higher temperature than one hundred and ten degrees of Fahrenheit),

which, either alone or in combination with the sewage, causes a nuisance or is dangerous or injurious to health, shall be liable to a penalty not exceeding ten pounds, and to a daily penalty not exceeding five pounds.

“(2.) The Local Authority, by any of their officers either generally or specially authorised in that behalf in writing may enter any premises for the purpose of examining whether the provisions of this section are being contravened, and if such entry be refused, any justice, on complaint on oath of such officer, made after reasonable notice in writing of such intended complaint has been given to the person having custody of the premises, may, by order under his hand, require such person to admit the officer into the premises, and if it be found that any offence under this section has been or is being committed in respect of the premises, the order shall continue in force until the offence shall have ceased or the work necessary to prevent the recurrence thereof shall have been executed.

“(3.) A person shall not be liable to a penalty for an offence against this section until the Local Authority have given him notice of the provisions of this section, nor for an offence committed before the expiration of seven days from the service of such notice, provided that the Local Authority

shall not be required to give the same person notice more than once."

District Councils are in possession of all sewers within their district, so, if interference with them is menaced, they can by their servants use force necessary to protect the works from illegal acts. They can enforce their right of entry to premises to examine their works, and have in urban districts power to remove buildings which are erected over their sewers. Section 26, Public Health Act, 1875, enacts :—

" Any person who, in any Urban District, without the written consent of the Urban Authority—

" (1) Causes any building to be newly erected over any sewer of the Urban Authority ; or

" (2) Causes any vault, arch, or cellar to be newly built or constructed under the carriageway of any street.

shall forfeit to the Urban Authority the sum of five pounds and a further sum of forty shillings for every day during which the offence is continued after written notice in this behalf from the Urban Authority ; and the Urban Authority may cause any building, vault, arch, or cellar erected or constructed in contravention of this section to be altered, pulled down, or otherwise dealt with as they may think fit, and may recover in a summary manner any expenses incurred by them in so doing from the offender."

Buildings which will stop access to sewers to do repairs may be removed,<sup>1</sup> but there must be some material invasion of the Council's statutory rights to warrant demolition.<sup>2</sup>

<sup>1</sup> *Goodhart v. Hyett*, 1883, 25 Ch.D. 182.

<sup>2</sup> *Sandgate L.B. v. Laney*, 1883, 25 Ch.D. 183*n*.

Conservators of rivers and canal companies may, at their own expense, and on substituting other sewers and drains equally effectual, and certified as such by the Council's Surveyor, take up, divert, or alter the level of any sewers or drains constructed by the Council and passing under or interfering with a river, canal, or the towing-paths thereof which such bodies are authorised to navigate by Act of Parliament (section 331, P.H. Act, 1875).

*The Disposal of Sewage—Sewage Works outside the District—Easements—The Rating of Sewers and Sewage Works.*

The District Council may provide the sewage farm and construct sewage works within their district or without it, or with the sanction of the Local Government Board cause their sewers to communicate with the sewers of the Council of any adjoining district on such terms and subject to such conditions as may be agreed on (section 28, Public Health Act, 1875). If such an arrangement is not duly sanctioned it will operate merely as a revocable licence.<sup>1</sup> Any such agreement is subject to the right of any owner or occupier outside a district to connect the drainage of his premises with the sewers within the district pursuant to section 22, Public Health Act, 1875.<sup>2</sup> The Council may farm their own sewage land and sell the

<sup>1</sup> See *Islington Vestry v. Hornsey U.D.C.*, 1900, 1 Ch. 695.

<sup>2</sup> *Newington L.B. v. Cotingham L.B.* 1879, 12 C.D. 725.

produce or lease the land for farming purposes for a term of 21 years or less (section 29).

Section 27, Public Health Act, 1875, is as follows :—

“27. For the purpose of receiving, storing, disinfecting, distributing, or otherwise disposing of sewage, any Local Authority may—

“(1.) Construct any works within their district, or (subject to the provisions of this Act as to sewage works without the district of the Local Authority) without their district; and

“(2.) Contract for the use of, purchase, or take on lease any land, buildings, engines, materials, or apparatus, either within or without their district; and

“(3.) Contract to supply for any period not exceeding twenty-five years any person with sewage, and as to the execution and cost of works either within or without their district for the purposes of such supply;

“Provided that no nuisance be created in the exercise of any of the powers given by this section.”

Any tithe rentcharge issuing out of land acquired by the Council must be redeemed (41 & 42 Vict. c. 42, s. 1, Tithe Commutation Act, 1878). Where sewage works cause a nuisance the High Court will interfere by injunction, but summary proceedings before Justices are not applicable where the nuisance is caused by the sewers or sewage works of a Local Authority.<sup>1</sup> Where the pollution of a stream is complained of, the Court has interfered although it has existed for many years,<sup>2</sup> but where injury to the

<sup>1</sup> R. v. Parlbay, 1869, 22 Q.B.D. 520.

<sup>2</sup> A.G. v. Leeds Corp., 1870, 5 Ch. Ap. 583.



plaintiff's rights are small and can be valued in money, damages are awarded instead of an injunction, which is rarely granted where it will interrupt works established for the welfare of the public.<sup>1</sup>

Before the Council commence to construct sewage works outside their district, they must comply with section 32, Public Health Act, 1875, which is as follows :—

“32. A Local Authority shall, three months at least before commencing the construction or extension of any sewer or other work for sewage purposes without their district, give notice of the intended work by advertisement in one or more of the local newspapers circulated within the district where the work is to be made.

“Such notice shall describe the nature of the intended work, and shall state the intended termini thereof, and the names of the parishes, and the turnpike roads and streets, and other lands (if any) through, across, under or on which the work is to be made, and shall name a place where a plan of the intended work is open for inspection at all reasonable hours; and a copy of such notice shall be served on the owners or reputed owners, lessees or reputed lessees, and occupiers of the said lands, and on the Overseers of such parishes, and on the trustees, surveyors of highways, or other persons having the care of such roads or streets.”

Owners of easements must be notified,<sup>2</sup> and if any owners object in writing within three months of the date of the notice, the works are not to be commenced without the sanction of the Local Government Board, who may direct an Inspector to hold a local inquiry and to report thereon.

<sup>1</sup> *Shelfer v. City Electric Co.*, 1895, 1 Ch. 289.

<sup>2</sup> *Cleckheaton D.C. v. Firth*, 1898, 62 J.P. 536.

The District Council are rateable to the poor rate in respect of sewage works, pumping stations, and outfall works. Such works, though unprofitable as used, are assessed on a value which they may have in the occupancy of a tenant who could apply them to any purpose.<sup>1</sup>

Underground sewers which form part of the sewerage system within the district are not rateable, but effluent sewers are rated as a part of outfall works.<sup>2</sup> In 1900, valuation of an outfall sewer, assessed on amount of the annual instalment of the loan raised by the District Council for the construction of sewage works, has been upheld.<sup>3</sup> Underground sewage works restrict the use to which the occupier of the surface can apply it, and thereby renders its annual value less, so that if the outfall sewers are not assessed, the poor rate may suffer a loss. In the Newport Union case, the Appeal Court<sup>4</sup> decided that all sewers which on general principles are *primâ facie* rateable, and which are not protected by prior decisions should be rated unless—

- (1) they are quite underground, so that the surface under which they lie is not occupied or in any way affected by them ;
- (2) no payment is made to the owners of the sewers for the use of them by others.

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<sup>1</sup> L.C.O. v. Erith, 1893, A.C. 562.

<sup>2</sup> M. of Leicester v. Beaumont Leys, 1894, 63 L.J., M.C. 177.

<sup>3</sup> Newport Union v. Ystradfydwg Sewerage B., 1900, 16 T.L.R. 142.

<sup>4</sup> A., 1901, 1 K.B. 406.

*House Drains—The Curtilage—The Right to Connect—The Ownership of Streets.*

The expression "drains" applies to pipes or other means of passage for surface water, roof drainage, or house drainage, but not to a mere field drain.<sup>1</sup> The statutory interpretation restricts the expression to drains used for one building only or premises within the same curtilage. The curtilage is in law part of the house with which it is occupied. It includes out-buildings, offices, or yard, a garden or inclosed ground adjoining to the house, which are assessed with it as a part of the annual value of the residence.<sup>2</sup> Generally curtilage includes whatever is annexed to and enjoyed with a house for its more convenient occupancy. An orchard, separated from a house by an inclosed yard, and a small garden beyond that was held not to be within the curtilage.<sup>3</sup> Curtilage on its origin points at what is occupied subserviently to one house or set of premises, but the decisions of the court on questions relating to sanitation treat it as a boundary fence or continuous wall, as in *Pilbrow v. St. Leonard, Shoreditch*, where two block buildings, consisting of 46 sets of apartments were separated by a causeway 20 feet wide which opened into the street. In the causeway was the dust-bin for the use of the occupiers of the blocks. The whole area

<sup>1</sup> *Holland v. Lazarus*, 1897, 61 J.P. 264.

<sup>2</sup> *L.C.C. v. Prior*, 1896, 1 Q.B. 131.

<sup>3</sup> *Asquith v. Griffin*, 1884, 48 J.P. 724.

was within one boundary wall, and the premises were drained by branch drains from the sets of apartments into a main drain, which was connected with a sewer within 100 feet of the blocks. The two blocks were held to be one set of premises within the same curtilage, and the owners liable for expenditure about works of alteration and abatement of a nuisance,<sup>1</sup> but if there are a number of houses with shops built to form a covered arcade which could be closed, the main drain used to carry the sewage from all the houses and to discharge into the street sewer, is a sewer vested in the District Council. There are many sets of premises although only one boundary wall.<sup>2</sup> A block of flats is one house. House ordinarily means the aggregate of rooms making up one building, not the mode in which it is sub-divided and let; but in the case quoted two distinct blocks were deemed to be one set of premises.

Owners and occupiers of premises within the district have a right to cause their drains to empty into the sewers belonging to the District Council by giving the prescribed notice, and subject to compliance with the regulations of the Council relating to the junction of drains with their sewers. The mode of making the drains of the premises is regulated by the bye-laws made pursuant to section 157, Public Health Act, 1875. Where the Council provide separate sewers to carry surface water, drains

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<sup>1</sup> 1895, 1 Q.B. 433.

<sup>2</sup> *St. Martin-in-the-Fields v. Bird*, 1895, 1 Q.B. 128.

which carry sewage may not be connected with them ;<sup>1</sup> and if connected ordure drainage may not afterwards be passed into the sewer.<sup>2</sup>

Section 21, Public Health Act, 1875, is as follows :—

“Section 21. The owner or occupier of the premises within the district of a Local Authority shall be entitled to cause his drains to empty into the sewers of that Authority on condition of his giving such notice as may be required by that Authority of his intention so to do, and of complying with the regulations of that Authority in respect of the mode in which the communications between such drains and sewers are to be made, and subject to the control of any person who may be appointed by that Authority to superintend the making of such communications.

“Any person causing a drain to enter into a sewer of a Local Authority without complying with the provisions of this section shall be liable to a penalty not exceeding twenty pounds, and the Local Authority may close any communication between a drain and sewer made in contravention of this section, and may recover in a summary manner from the person so offending any expenses incurred by them under this section.”

The surface of ground vested in the District Council, may be opened to permit of the junction of house drains with public sewers,<sup>3</sup> but there is no right to enter private property for that purpose. Although the occupier of premises abutting on a street, whether repairable by the public or not has a right of access to it at any point in his frontage, he has no right to interfere with the subsoil of a private

<sup>1</sup> *Kinson Pottery Co. v. Poole*, 1889, 2 Q.B. 41.

<sup>2</sup> *Graham v. Wroughton*, 1901, 17 T.L.R. 470.

<sup>3</sup> *A. G. v. Cambridge Gas Co.*, 1868, L.R. 4 Ch., Ap. 71.

street unless the ownership of his premises includes ownership of the subsoil of the street to the middle of it, pursuant to the rule of law, which presumes that inclosures contiguous to a highway include the soil of it *ad medium filum viæ*.<sup>1</sup>

This restriction of the power of frontagers to connect their house drains is disadvantageous to the public. The passage of drains under this street cannot diminish the value of the proprietary rights, the surface being irrevocably dedicated to public purposes, and drains cannot interfere with excavation of the sublying minerals. Where roads have been set out under an Inclosure Award, the subsoil is generally vested in the lord of the manor, and where an owner lays out and dedicates a road on the boundary of his land, he retains ownership of the soil although his neighbour acquires a right of access to the thoroughfare on foot and for his horses and carriages. A notice to connect drains with the public sewer in a street if it involves the commission of a trespass is invalid. In *Russell v. Knight*,<sup>2</sup> the court held that the trespass of using private property for the purpose of making a communication with a sewer could not be justified by any of the provisions of the P.H. Acts, even where the sewer was vested in the public authority.

When factory drains have been lawfully connected with public sewers under section 21, the Council may

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<sup>1</sup> *Bathard v. Commrs. of Sewers*, 1890, 54 J.P. 155.

<sup>2</sup> *Russell v. Knight*, the "Times," May 3, 1894.

not disconnect them unless it is shown that section 7 of the Rivers Pollution Act, 1876, applies.<sup>1</sup>

The cost of making the connection of drains in the prescribed mode is borne by the owner or occupier of the premises, but where Part III. of the Public Health Acts Amendment Act, 1890, is in force the Council must, if requested so to do, undertake the work of connecting drains with their sewers and of incidental alterations in the drains. Section 18 is as follows :—

“Section 18.—(1.) Where the owner or occupier of any premises is entitled to cause any sewer or drain from those premises to communicate with any sewer of the Local Authority, the Local Authority shall, if requested to do so by such owner or occupier, and upon the cost thereof being paid in advance to the Local Authority, themselves make the communication and execute all works necessary for that purpose.

“(2.) The cost of making such communication (including all costs incidental thereto) shall be estimated by the surveyor of the Local Authority, but in case the owner or occupier of the premises, as the case may be, is dissatisfied with such estimate, he may, if the estimate is under fifty pounds, apply to a Court of Summary Jurisdiction to fix the amount to be paid for such cost, and if the estimate is over fifty pounds have the same determined by arbitration in manner provided by the Public Health Acts.

“(3.) A Local Authority may agree with the owner of any premises that any sewer or drain which such owner is required or desires to make, alter, or enlarge, or any part of such sewer or drain shall be made, altered, or enlarged by the Local Authority.”

Drains which are connected with sewers in contravention of the regulations of the Council may be

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<sup>1</sup> Eastwood v. Hanley U.D.C., 1901, 1 Ch. 645.



disconnected ;<sup>1</sup> but where they are duly connected the Council are not entitled to disconnect because a nuisance for which the Council are responsible is caused by the drainage ;<sup>2</sup> and where an owner who connected his house drainage with a drain made by the Council to carry rain water and sink water after such drainage had continued 20 years, was summoned for causing a nuisance which arose from the drainage from his house and from other houses the Court held that the responsibility for the nuisance lay with the Council, owing to their failure to provide sufficient sewers for the drainage of the district.<sup>3</sup>

Where a house is not effectually drained, it is the duty of the District Council to enforce section 23, Public Health Act, 1875.

“Section 23. Where any house within the district of a Local Authority is without a drain sufficient for effectual drainage, the Local Authority shall, by written notice, require the owner or occupier of such house, within a reasonable time therein specified, to make a covered drain or drains emptying into any sewer which the Local Authority are entitled to use, and which is not more than 100 feet from the site of such house ; but if no such means of drainage are within that distance, then emptying into such covered cesspool or other place not being under any house as the Local Authority direct ; and the Local Authority may require any such drain or drains to be of such materials and size, and to be laid at such level, and with such fall as on the report of their Surveyor may appear to them to be necessary.

“If such notice is not complied with, the Local Authority may, after the expiration of the time specified in the notice,

<sup>1</sup> *Baxter v. M. of Bedford*, 1884, 1 T.L.R. 424.

<sup>2</sup> *Ainley v. Kirkheaton*, L.B., 1891, 60 L.J., Ch. 734.

<sup>3</sup> *Fordam v. Parsons*, 1894, 2 Q.B. 780.



do the work required, and may recover in a summary manner the expenses incurred by them in so doing from the owner, or may by order declare the same to be private improvement expenses.

“Provided that where, in the opinion of the Local Authority, greater expense would be incurred in causing the drains of two or more houses to empty into an existing sewer pursuant to this section, than in constructing a new sewer and causing such drains to empty therein, the Local Authority may construct such new sewer, and require the owners or occupiers of such houses to cause their drains to empty therein, and may apportion as they deem just the expenses of the construction of such sewer among the owners of the several houses, and recover in a summary manner the sums apportioned from such owners, or may by order declare the same to be private improvement expenses.”

If the owner is notified under this section, section 306, Public Health Act, 1875, enables him to obtain entry to the premises should the occupier obstruct. The sufficiency of a drain relates to the drain itself, not to the sewer into which it discharges.<sup>1</sup> If the owner deems himself aggrieved by the requisition of the Council he can by way of appeal memorialise the Local Government Board pursuant to section 268, Public Health Act, 1875. The Council judge of the suitability of the materials to be used in the work, and must fix the size of the drain. The site of the house is the space on which it is built, not including the curtilage. The owner can be notified to construct a new cesspool, and if one is constructed they can enforce byelaws regulating its position and the materials used in the work.<sup>2</sup>

<sup>1</sup> *St. Marylebone v. Viret*, 1865, 19 C.B., N.S. 424.

<sup>2</sup> *Simmons v. Malling*, R.D.C., 1897, 2 Q.B. 433.

The drainage of terraces can be facilitated by putting into force the last paragraph of section 23 where there is land belonging to a different owner adjoining the houses to be drained, or where the ownership of the premises to be drained are severed from the ownership of the subsoil of the street to which they adjoin. The Council can enter the land to do the works pursuant to notice under section 16, and the owner can make a claim for compensation.

The notification does not warrant a trespass in order to comply with it,<sup>1</sup> nor does it make the person who executes it agent of the Council, so as to make them responsible for his neglect, which causes injury to passengers.<sup>2</sup> If the Council execute the works negligently they are responsible for damage caused to buildings.<sup>3</sup>

Section 24 of the Public Health Act, 1875, empowers a District Council to adapt existing drainage works to a new sewer system, and to defray the expenses at the public charge. Thus, there are two sets of powers to ensure effectual house drainage. In order to find who is liable to defray the expenses of the necessary works, it must be ascertained whether the Council are enforcing section 23 or section 24.<sup>4</sup>

Sections 23 and 24 apply to rural districts, but section 25, which prohibits to build or rebuild a

<sup>1</sup> *M. of Searboro' v. S. R.S.A.*, 1876, 1 Ex. D. 344.

<sup>2</sup> *Steel v. Dartford*, L.B., 1890, 60 L.J. Q.B. 256.

<sup>3</sup> *Hall v. M. of Batley*, 1878, 37 L.T. 710.

<sup>4</sup> *St. Marylebone v. Viret*, 1865, 34 L.J. 214; *St. Martin's v. Ward*, 1897, 1 Q.B. 40.

house without a covered drain affects Urban Districts. If a Rural Council find this power desirable they can apply to the Local Government Board to grant them urban powers, pursuant to section 276.

“Section 24. Where any house within the district of a Local Authority has a drain communicating with any sewer, which drain though sufficient for the effectual drainage of the house is not adapted to the general sewerage system of the district, or is, in the opinion of the Local Authority, otherwise objectionable, the Local Authority may, on condition of providing a drain or drains as effectual for the drainage of the house, and communicating with such other sewer as they think fit, close such first-mentioned drain, and may do any works necessary for that purpose, and the expenses of those works, and of the construction of any drain or drains provided by them under this section, shall be deemed to be expenses properly incurred by them in the execution of this Act.

“Section 25. It shall not be lawful in any Urban District newly to erect any house or to rebuild any house which has been pulled down to or below the ground floor, or to occupy any house so newly erected or rebuilt, unless and until a covered drain or drains be constructed, of such size and materials, and at such level, and with such fall as on the report of the surveyor may appear to the Urban Authority to be necessary for the effectual drainage of such house; and the drain or drains so to be constructed shall empty into any sewer which the Urban Authority are entitled to use, and which is within 100 feet of some part of the site of the house to be built or rebuilt; but if no such means of drainage are within that distance, then shall empty into such covered cesspool or other place, not being under any house, as the Urban Authority direct.

“Any person who causes any houses to be erected or rebuilt or any drain to be constructed in contravention of this section shall be liable to a penalty not exceeding fifty pounds.”

The Surveyor referred to is the permanent officer of the Council appointed pursuant to section 189, Public Health Act, 1875. There is no appeal against the requirements of the Council as to the sufficiency of the drains to be made for the new buildings, but they cannot insist on the deposit of plans of reconstruction and alteration of drains of existing buildings except under bylaws made pursuant to section 23, P.H. Acts A. Act, 1890, prohibiting alterations in such a way that if at first so constructed they would have contravened the bylaws.

### *Cesspools.*

The sump system is a favourite mode of drainage in Rural Districts and the outlying parts of Urban Districts. The collection of sewage in cesspools cannot be avoided where there is no public sewer within the distance of 100 feet from the site of a house (section 23, Public Health Act, 1875); so the construction and management of them must be considered. The Council can direct where a cesspool is to be formed on the premises which are to drain into it, and by means of bylaws they can prohibit the construction of cesspools within a fixed distance from a house, and such general bylaws are applicable to cesspools in connection with old as well as new buildings and are enforceable where the premises are not extensive enough to permit of the construction of a cesspool at the prescribed distance; section 157 (4),

Public Health Act, 1875.<sup>1</sup> The Conneil are bound to provide that cesspools are made and kept so as not to be a nuisance, and may undertake or contract for their cleansing. The Local Government Board are empowered to compel the Council to undertake this duty (sections 42, 42, *ib.*). Adherence to the requirements of the District Conneil in the management of cesspools does not modify the rights of neighbours where their interests are affected by percolation of sewage. A neighbour's well must not be polluted.<sup>2</sup>

The construction of cesspools under houses is prohibited, and by section 24, Public Health Acts Amendment Act, 1890.

"24.—(1.) Where any portion of a room extends immediately over any privy (not being a watercloset or earth-closet), or immediately over any cesspool, midden, or ashpit, that room, whether built before or after the adoption of this part of this Act, shall not be occupied as a dwelling place, sleeping place, or workroom, or place of habitual employment of any person in any manufacture, trade, or business during any portion of the day or night."

Section 23, Public Health Act, 1875, empowers the Council to notify an owner or occupier to convey house drainage into a cesspool where there is not a public sewer within 100 feet from the site of the house. The Act requires a cesspool to be made by some one, and there appears no ground to warrant a doubt expressed in the text books about the power of the Council to construct a cesspool and recover the expenses incurred from the owner of the premises.

<sup>1</sup> *Simmons v. Mallng*, R.D.C., 1897, 2 Q.B. 433.

<sup>2</sup> *Womersley v. Church*, 1897, 17 L.T. 190.

*Mines—Support of Sanitary Works.*

Mines seldom come within the scope of the provisions of the Public Health Acts, but they are not entirely exempted therefrom. Black smoke must be consumed in the colliery furnaces or the owners will incur penalties under the nuisances clauses of the Public Health Acts. By section 91 penalties are imposed on persons who cause black smoke to be discharged from chimneys so as to be a nuisance. This includes mine chimneys, except where the smoke cannot be consumed without interfering with or obstructing the efficient working of the mine.<sup>1</sup>

Section 334, Public Health Act, 1875, is as follows :—

“Section 334. Nothing in this Act shall be construed to extend to mines of different descriptions so as to interfere with or obstruct the efficient working of the same; nor to the smelting of ores and minerals, nor to the calcining, puddling, and rolling of iron and other metals, nor to the conversion of pig iron into wrought iron, so as to obstruct or interfere with any of such processes respectively.”

If evidence shows that a nuisance caused by working or smelting minerals can be avoided without hindrance to the operations the Justices must convict. Buildings, not being a dwellinghouse used exclusively for the working of mines, are exempted from the requirements of building byelaws.

The working of mines is regulated by the Metaliferous Mines Acts, 1872, 1875, and the Mines Regulations Acts, and supervised by Government

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<sup>1</sup> Patterson v. Chamber Colly, 1892, 36 J.P. 209.

Inspectors. The winning of minerals within the district of a Local Authority does not concern them till the security of some sanitary work may be affected thereby. "Sanitary works" mean works of sewerage, drainage, sewage disposal, lighting, or water supply. By the Support of Sewers Act, 1883, 46 & 47 Vict. c. 37, Local Authorities in mining districts acquire a right to vertical and lateral support to their sanitary works if they comply with the requirements of sections 18 to 27 of the Waterworks Clauses Act, 1847.

A District Council do not acquire any title to minerals under sanitary works unless by purchasing them, but such minerals must not be worked within 40 yards therefrom without notifying the Council, who may then acquire the minerals, making compensation to the owners. If the Council refuse to acquire the minerals the owner may work them in the usual mode. This Act only affects the amount of compensation which may be claimed for sewers made through mining lands. No right of support is acquired, so that compensation cannot be claimed till the owner desires to work the underlying minerals.

Where sanitary works are laid in lands, not being mining lands, an obligation to secure support is cast on the landowner, hence he has an immediate right to compensation for deprivation of the powers of freely working subjacent minerals.<sup>1</sup>

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<sup>1</sup> *Re Corp. of Dudley*, 1881, 8 Q.B.D. 86.



A right to support might have been acquired by prescription before the Support of Sewers Act, 1883, came into force; since then such right cannot be acquired otherwise than pursuant to that Act. It applies to lands vested in or occupied by the Local Authority, and to land wholly or partially dedicated to the public as a street, highway, or public place (46 & 47 Vict. c. 37, section 3). It is not clear what substances are included in section 18 of the Act of 1847, by the words "mines of coal, ironstone, slate, or other minerals." The House of Lords in 1888 decided that they did not include brick-clay near the surface,<sup>1</sup> and in 1890 the same words were for the purposes of the Railway Clauses Act, 1845, held to include limestone worked in an open surface quarry.<sup>2</sup>

The map and plan of underground works of the Council are to be made within six months after the time of construction, and deposited with the Clerk of the Peace of the county in which the district is situate within three months afterwards, or after any correction of or addition thereto. The Act of 1847 makes no provision for the correction of the first map deposited with the Clerk of the Peace, hence a new map with the additions must be deposited each time a new work is made through mining lands. If the prescribed map is not so deposited the Council lose their right of action for interference with the support of their works.<sup>3</sup> Where damage to mines is caused

<sup>1</sup> *Provost of Glasgow v. Farin*, 1888, 13 A.C. 657.

<sup>2</sup> *Midland Ry. v. Robinson*, 1889, 15 A.C. 19.

<sup>3</sup> *S. Stafford Wks. v. Mason*, 1887, 57 L.T. 116.



by means or in consequence of sanitary works the Council may be held responsible (section 27 Wks. Cl. Act, 1847).

### *Privies.*

The erection of houses without a sufficient water-closet, earth-closet, or privy, is forbidden by section 35, P.H. Act, 1875, and section 36 confers on a district council power to enforce the provision of a water-closet in any case where their surveyor or inspector of nuisances reports that the existing privy is insufficient, and in default of compliance with such requirement, to do the necessary work and recover the expenses so incurred from the owner of the premises.<sup>1</sup> District councils are not empowered to make a general requisition for all houses to be provided with water-closets. In each case they must act on the report of their officer.<sup>2</sup> Nor can they dictate what pattern of closet is to be used. Their requirement is satisfied by the use of a closet which is effectual for cleanliness and drainage. By permission of the council earth-closets may be used instead of water-closets, and the inmates of several houses may be allowed to use one closet or privy.<sup>3</sup>

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<sup>1</sup> *Nicholl v. Epping U.D.C.*, 1899, 1 Ch. 844. Subject to the right to appeal to the L.G. Board under section 268.

<sup>2</sup> *Wood v. Widnes Corporation*, 1898, 1 Q.B. 463.

<sup>3</sup> Section 37. Earth-closet includes any place for the reception and deodorization of fecal matter constructed to the satisfaction of the Council.

## CHAPTER 5.

## STREETS AND PRIVATE STREETS.

## HIGHWAYS AND STREETS.

*The Office of Surveyor—Accidents—Agreements to make New Roads and Bridges—County Bridges—Streets—Trees—Monuments.*

The office of Surveyor of Highways is filled by the District Council. The duties of that officer under the Highway Act, 1835, 5 & 6 Will. IV. c. 50, were supervisory; the Public Health Acts have vested in the District Council the fabric of streets which are repairable at the public charge, and the Local Government Act, 1894, section 26, makes obligatory on the district the exercise of their powers to protect all public rights of way from obstruction and encroachment. The "vesting" of the soil and materials of streets extends so far as is necessary for the control, protection, and maintenance thereof as highways.<sup>1</sup> This enables the District Council to assert their powers as legal rights without the necessity of obtaining the

<sup>1</sup> *Tunbridge Wells v. Baird*, 1896, A.C. 434; *Q. v. J. J. of London*, 1899, 25 Q.B.D. 368.

fiat of the Attorney-General before commencing an action as is the case where actions are brought merely to enforce public rights. The "vesting" of a street vests only property in the materials of the surface of it, and right to protect and use the spaces above and below it, so far as may be necessarily subservient to the management of it. "Vesting" does not pass the subsoil of streets to the District Council as owners, and where they are legally divested thereof they are not entitled to compensation as for the loss of property.<sup>1</sup> The extent of user measures the extent of space in which the District Council can enforce their rights below and above the streets. It varies and adapts itself to local circumstances. In Fareham,<sup>2</sup> the Court held that the zone of atmosphere above the surface of a street was subject to the control of the Council for the purpose of enabling them to execute their powers of lighting their district. They can protect their wires used for the supply of electricity or the wires and pipes of other persons whom they have duly authorised to carry wires over streets or to lay pipes under them for public purposes or such as are authorised by Statute, but not otherwise for the purpose of private profit,<sup>3</sup> and if pipes are unwarrantably laid in the subsoil of a street, the restriction on the statutory rights of the Council obliges them to pursue whatever statutory remedy is attached to the illegal act. They cannot as owners, in the first

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<sup>1</sup> *M. C. of Sydney v. Young*, 1898, A.C. 457.

<sup>2</sup> *L. B. v. Smith*, 1891, 7 T.L.R. 443.

<sup>3</sup> *Salt Union v. Harvey*, 1897, 61 J.P. 375.

instance, apply to the Court of Chancery for a mandatory injunction to abate the trespass in the subsoil of the street, although if they have enforced a summary statutory remedy and recovered penalties, they may resort to an injunction as a supplementary remedy in aid.<sup>1</sup> Section 144, Public Health Act, 1875, is as follows :—

“144. Every District Council shall, within their district, exclusively of any other person, execute the office of and be surveyor of highways, and have, exercise, and be subject to all the powers, authorities, duties, and liabilities of surveyors of highways under the law for the time being in force, save so far as such powers, authorities, or duties are, or may be, inconsistent with the provisions of this Act; every Urban Authority shall also have, exercise, and be subject to all the powers, authorities, duties, and liabilities which, by the Highways Act, 1835, or any Act amending the same, are vested in and given to the inhabitants in Vestry assembled of any parish within their district.

“All ministerial acts required by any Act of Parliament to be done by or to the Surveyor of Highways may be done by or to the Surveyor of the Urban Authority, or by or to such other person as they may appoint.”

### *The Office of Surveyor.*

Neglect to repair streets and roads may be the subject of a complaint to the Local Government Board pursuant to section 299, Public Health Act, 1875, and the order of the Board may be enforced by the High Court; or an indictment may be presented against a District Council pursuant to section 10 of

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<sup>1</sup> *St. Mary, Battersea v. London Brush Electric Company*, 1899, 1 Ch. 474.

the Highways and Locomotives Act, 1878. *Reg. v. Wakefield Corporation*, 20 Q.B.D. 810, is an instance. Any fine imposed is applied towards the repair of the highway out of repair, and if the Council effectually repair before the fine is paid further proceedings are stayed.<sup>1</sup> Actions for damages resulting from mere omission to repair do not lie against a District Council in their capacity of surveyor of highways, but for negligent execution of any works, sanitary or other on a street or other highway, the District Council are responsible, or where the performance of some act is directed by Statute and negligently omitted by them. The employment of a contractor to execute work does not shift to him the liabilities imposed by Statute on the District Council. The rule of law by which regulates the the liability of District Councils for accidents attributable to street works is well stated in *Pitts v. Kingsbridge Highway Board*, 1871, 25 L.J. 195, thus :—"The District Council are liable for such injurious acts of a contractor as flow out of the fulfilment of a contract with them for the purpose of carrying their statutory powers into execution, but the contractor is personally liable for injurious acts which are done in the course of the execution of such a contract and are foreign to the fulfilment of it." Statutory bodies cannot divest themselves of their powers and duties by contract, and when they exercise

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<sup>1</sup> *R. v. Burnard*, 1840, 12 A. & E. 428.

them they must do so with due care.<sup>1</sup> If performance of works involves supervision in order to protect persons and property from injurious consequences which can be foreseen to attend the execution of the works, the District Council must see that steps are taken to protect passengers and residents. But if they have done all that can be done to prevent works from being wrongfully executed, they have fulfilled their statutory duty, nothing has been neglected, and if any accident happens to persons the Council are not responsible; and for loss caused to property by the execution of works as authorised by Statute the remedy of one who suffers loss thereby is by making a claim for compensation pursuant to section 308, Public Health Act, 1878. Contractors are liable for such negligent acts done by their workmen as are foreign to the fulfilment of the contract with the Council.<sup>2</sup> To protect the ratepayers from liabilities incidental to the execution of work on streets they should stipulate with contractors to indemnify them from losses which are attributable to negligence. Where the Council employ their own servants to do street repairs which may cause injury to passengers or loss to residents they erect a screen, and statutory companies who execute authorised works in streets should adopt a like precaution.

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<sup>1</sup> Gibraltar Commissioners v. Orfila, 1890, A.C. 400; Hughes v. Percival, 1883, 8 A.C. 443.

<sup>2</sup> Holiday v. National Telephone Co., 1898, 47 W.R. 203.

Flying stones may injure persons and break shop windows.<sup>1</sup>

### *Accidents.*

Gas and water companies have statutory powers to break up streets, and when so doing they are in control of their works, and must protect passengers from any danger arising therefrom. They are neither the agents nor the servants of the Council, and if they neglect the fencing, guarding, and lighting of their works, and the due reparation of the street, they are subject to penalties (section 11, Gasworks Clauses Act, 1847) and to actions in respect of injuries arising from defective execution of their statutory powers.<sup>2</sup> The general rule is that an action does not lie unless there has been negligence. Where there is nothing to warn the Council of defects in sewers which cause a sinking of surface in a street; they are not negligent merely because it causes an accident.<sup>3</sup> A company by neglecting to reinstate a road do more than fail in performance of a mere statutory duty; they cause a public nuisance for which, apart from the Statute, they may be indicted and held responsible for consequences. The imposition of a penalty covers the breach of a mere statutory duty, *e.g.*, for failing to supply gas

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<sup>1</sup> *Hornby v. Liverpool Gas Co.*, 1883, 47 J.P. 231 (section 6, Gasworks Cl. Act, 1847).

<sup>2</sup> Gasworks Clauses Act, 1847, section 29; *Goodson v. Sunbury Gas Co.*, 1896, 75 L.T. 251.

<sup>3</sup> *Lambert v. Lowestoft Corporation*, 1901, 1 K.B. 590.

or water, and where a person suffers damage by reason of an impure or insufficient supply he has no right of action by reason of that breach.<sup>1</sup> The obligation of the company, if any, depends upon the provisions of the Statute which create it, and not upon the contract.

The rule of law exempting a Highway Authority from liability in respect of non-repair of a road is a stumbling block to suitors. They sue the wrong party; where a Council notify an owner to construct drains, and in so doing the owner breaks the road surface and insufficiently reinstates, thereby causing an accident, the Council are not liable to the injured person. The giving a notice does not make an owner the agent of the Council, and they have done nothing to cause the accident. The owner who made the trench should be sued.<sup>2</sup> District Councils have power to remove obstructions in streets without first resorting to legal proceedings before justices or other courts. If an obstruction or encroachment is known to exist the Council should direct their officers to abate the nuisance so caused. Any expense incurred by restoration of any damage caused to the streets may be recovered from the wrongdoers,<sup>3</sup> but actions do not lie against a Council for not removing an encroachment, nor has one owner of property in street a right of action against another for encroach-

<sup>1</sup> *Atkinson v. Newcastle Waterworks Co.*, 1877, 2 Ex. D. 441; *Clegg v. Estry Gas Co.*, 1896, 1 Q.B. 593.

<sup>2</sup> *Steel v. Dartford L.I. Bd.*, 1890, 60 L.J., Q.B. 256.

<sup>3</sup> *Reynolds v. Presteign U.D.C.*, 1896, 1 Q.B. 604; *Louth U.D.C. v. West*, 1896, 65 L.J., Q.B. 535.



ing on a street unless special damage is proved.<sup>1</sup> The remedy against the Council in such cases is by writ of mandamus to compel the fulfilment of their public duty.

### *Agreements to make New Roads and Bridges.*

Sections 146 to 148 confer on District Councils, *i.e.*, on a majority of the Council, power to enter into agreements for undertaking the construction of new public roads and bridges at the expense of land-owners and companies; and the Highways and Bridges Act, 1891, empowers District Councils and County Councils to make and carry into effect agreements with each other for the construction, alteration, and improvement of main roads and other highways, and of bridges and the approaches thereto at the public charge, in such proportion as are agreed on, provided that where any parish is specially benefited by the new works the expense thereof may, with the consents of the County Council and District Council, be charged exclusively on that parish (54 & 55 Vict. c. 63, s. 3).

“146. A District Council may agree with any person for the making of roads within their district for the public use through the lands and at the expense of such person, and may agree that such roads shall become, and the same shall accordingly become on completion, highways maintainable and repairable by the inhabitants at large within their district; they may also, with the consent of two-thirds of

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<sup>1</sup> A.G. v. Pudsey L.R., 1895, 59 J.P. 329.

their number. agree with such persons to pay, and may accordingly pay any portion of the expenses of making such roads."

Such agreements are to be made with the owner of the land, not with the trustees of settled estates. In the latter case streets and open spaces may be laid out by direction of the High Court under the Settled Estates Act, 1877 (40 & 41 Viet. c. 18, s. 20). A District Council are not empowered to contract to dedicate a road; they must from time to time exercise their powers for the public benefit, and exercise their judgment when facts call for them to put in force an Act.<sup>1</sup>

"147. Any District Council may agree with the proprietors of any canal, railway, or tramway to adopt and maintain any existing or projected bridge, viaduct, or arch within their district, over or under any such canal, railway, or tramway, and the approaches thereto, and may accordingly adopt and maintain such bridge, viaduct, or arch and approaches as parts of public streets or roads maintainable and repairable by the inhabitants at large within their district; or such authority may themselves agree to construct any such bridge, viaduct, or arch at the expense of such proprietors; they may also with the consent of two-thirds of their number, agree to pay, and may accordingly pay, any portion of the expenses of the construction or alteration of any such bridge, viaduct, or arch, or of the purchase of any adjoining lands required for the foundation and support thereof, or for the approaches thereto."

By a Bill in Parliament in 1901 it is proposed to extend this section, and the Highways and Bridges Act, 1891, so as to enable Councils to agree with

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<sup>1</sup> *Tunbridge Wells v. Southborough L.B.*, 1889, 60 L.T. 172.

companies and others for the improvement and construction of roads and bridges. This adoption of bridges does not alter the statutory liabilities of the company.

“148. Any District Council may by agreement with any person liable to repair any street or road, or any part thereof, or with the Surveyor of any county bridge, take on themselves the maintenance, repair, cleansing, or watering of any such street or road or any part thereof, or of any road over any county bridge, and the approaches thereto, or of any part of the said streets or roads within their district.”

County Councils may act as surveyors of main roads, and they perform the duties of the inhabitants of the county relating to the maintenance and repair of county bridges (section 79, L.G. Act, 1888) ; such bridges do not form part of streets (section 4, P.H. Act, 1875).

### *County Bridges.*

Bridges which were repaired or ought to have been repaired by Turnpike Trustees became county bridges in 1870 (33 & 34 Vict. c. 73, s. 12),<sup>1</sup> and their fabric and the walls, banks, and fences of the raised approaches to them and the land arches are maintained and repaired by the County Council as in the case of other county bridges erected since 1835.

By the common law the County are liable to the maintenance of county bridges in use before 1835.

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<sup>1</sup> Reg. v. Somerset, 1878, 38 L.T. 452.

and to maintain and repair the highways over them and at the ends of them to the distance of 300 feet ; but the Highway Authority are liable to repair highways over county bridges erected since the Highway Act, 1835, came into force. New county bridges built under their superintendence and inspection are adopted by the County Council, and they may adopt other bridges which are certified to be in good repair (the Bridges Act, 1803, 43 Geo. 3, c. 59 ; Highways and Locomotives Act, 1878, section 21). The Local Government Act, 1888, section 22, empowers a County Council to purchase or adopt on terms to be agreed on bridges which the county were then not liable to repair and to erect new bridges and to maintain and improve them.

### *Streets.*

Section 149, Public Health Act, 1875, vests the materials of streets in Urban District Councils. No similar provision applies to highways in rural districts except where a Rural Council exercise urban powers in respect of a particular road.

The word "street" is thus interpreted :—

" 'Street' includes any highway and any public bridge (not being a county bridge) and any road, lane, footway, square, court, alley, or passage whether a thoroughfare or not."

This includes both private streets, which are repairable by the owners of land abutting on them or by persons by reason of tenure, but the vesting of

materials of streets does not extend to such as are not repairable at the public charge. A doubt about the ownership of minerals under streets is met by section 27, Highways and Locomotives Act, 1878, which provides that the vesting of streets is not to alter the ownership of minerals under streets, and the owners may work and win the same if they can so do without damage to the street. The District Council are entitled to protect streets from alteration of the level of the surface, and it would seem to follow from this that where the use of the surface is interrupted by sub-mining and expenditure thereby caused they can recover damages from those who have worked the minerals; but this has been doubted.<sup>1</sup>

But if a street is lowered the Council are entitled to restore its level, although by so doing they interfere with the access of houses which have subsided below the original level of the street<sup>2</sup>; but where the Council resolve to alter the natural level of a street and thereby cause loss to a frontager he is entitled to compensation pursuant to section 308, Public Health Act, 1875.

"149. All streets being or which at any time become highways repairable by the inhabitants at large within any Urban District, and the pavement, stones, and other materials thereof, and all buildings, implements, and other things provided for the purpose thereof, shall vest in and be under the control of the Urban Authority.

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<sup>1</sup> *A.G. v. Conduit Colliery, L.R.*, 1895, 1 Q.B. 301.

<sup>2</sup> *Atherton v. Cheshire C.U.*, 1896, 60 J.P. 6.

"The Urban Authority shall from time to time cause all such streets to be levelled, paved, metalled, flagged, channelled, altered, and repaired, as occasion may require ; they may from time to time cause the soil of any such street to be raised, lowered, or altered, as they may think fit ; and may place and keep in repair fences and posts for the safety of foot passengers.

"Any person who without the consent of the Urban Authority wilfully displaces or takes up, or who injures the pavement, stones, materials, fences, or posts of, or the trees, in any such street, shall be liable to a penalty not exceeding five pounds, and to a further penalty not exceeding five shillings for every square foot of pavement, stones, or other materials so displaced, taken up, or injured ; he shall also be liable in case of any injury to trees to pay to the Local Authority such amount of compensation as the court may award."

It is not obligatory on owners or occupiers to fence the boundary of property which abuts on a street, nor can the council make byelaws regulating the erection of fences at the side of streets, but fences and boundary walls must not obstruct the free passage along a street, nor may they be of such dimensions as to interfere with the ventilation of the street. Such walls could not be erected in advance of the building line of the street without the written consent of the Council. The Council are empowered to fence streets for the protection of passengers, and may compel owners to erect fences where any hole or work on land near a street is a source of danger to passengers.

The last paragraph of section 149 enables the Council to disallow of the opening of coal holes and cellar shoots in streets. By section 73 of the Towns

Improvement Clauses Act, a penalty of five pounds may be enforced against occupiers who neglect to keep the entrance to a cellar in repair, and the Council can repair the entrances to cellars or vaults opening in the pavement of a street; and where the Public Health Acts Amendment Act, 1890, is adopted, the liabilities of occupiers and owners in respect of cellars under streets extend to the maintenance of the surface of the path over the cellar. Section 35 provides that—

“ 35.—(1.) All vaults, arches, and cellars under any street, and all openings into such vaults, arches, or cellars in the surface of any street, and all cellar-heads, gratings, lights, and coal holes in the surface of any street, and all landings, flags, or stones of the path or street supporting the same respectively, shall be kept in good condition and repair by the owners or occupiers of the same, or of the houses or buildings to which the same respectively belong.

“(2.) Where any default is made in complying with the provisions of this section, the Urban Authority may, after twenty-four hours' notice in that behalf, cause anything in respect of which such default is made to be repaired or put into good condition, and the expenses of so doing shall be paid to the Urban Authority by such owner or occupier respectively, or in default may be recovered in a summary manner.”

Occupiers of premises adjoining a highway have a right of access to it for themselves, their horses, and carriages, although they have to cross a part of the highway laid out as a footpath, and the exercise of the right may destroy the pavement of the footpath. It is actionable to obstruct a frontager's right of



access by the erection of trees or fences.<sup>1</sup> The right of access may be used for any purpose and to any extent so as not to militate with public rights of passage. Where a Local Authority had refused to permit an occupier to form a paved driving way across a footpath in a street, it was held that he was justified in driving heavy trolleys over it, although by so doing the pavement was crushed,<sup>2</sup> but the right of access to streets is to come on the surface at any point, not to pierce it from a cellar. The surface is wholly dedicated to the public, so the District Council may disallow of coal holes and cellar doors.

### *Trees.*

Section 149 purports to entitle the Council to compensation for injury done by unauthorised work to trees in a street, but unless the Public Health Acts Amendment Act, 1890, Part 3, is adopted, a District Council have no power to plant trees in streets, so it is not easy to see why, in other cases, compensation is to be made for injury to trees which belong, probably, to the owners of the land abutting in the street, although such owners may not remove trees growing in a street if, [by so doing, they injure the surface.

Section 43 of the Act of 1890 provides :—

“ 43. Any Urban Authority may, if they see fit, cause trees to be planted in any highway repairable by the inhabitants at

<sup>1</sup> *Ramus v. Southend L.B.*, 1892, 67 L.T. 169.

<sup>2</sup> *St. Mary, Newington v. Jacobs*, 1871, L.R., 7 Q.B. 47.



large within their district, and may erect guards or fences for the protection of the same, provided that this power shall not be exercised nor shall any trees so planted be continued so as to hinder the reasonable use of the highway by the public or any person entitled to use the same, or so as to become a nuisance or injurious to any adjacent owner or occupier."

The Public Health Acts do not empower the Council to place seats in streets, but where that was done by the Surbiton Urban District Council in 1888, an indictment presented against them was ignored. Where a landowner threatened to cut down a row of old elms which grew in a street, the High Court granted an injunction to stop him. Where the omission to lop trees causes injury to passengers, the Council are not responsible; possibly where they plant trees the neglect might cast responsibility on them.<sup>1</sup> Section 42 of the Act of 1900 provides that—

"42. Any Urban Authority may from time to time authorise the erection in any street or public place within their district of any statue or monument, and may maintain the same, and any statue or monument erected within their district before the adoption of this part of this Act, and may remove any statue or monument the erection of which has been authorised by them."

The right of the Council to remove public monuments at any time cannot be restricted by resolution of their predecessors. Public benefactors take the risk of a change in public opinion. All agreements

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<sup>1</sup> *Tregellas v. L.C.C.*, 1897, 14 T.L.R. 55.

which will have the effect of preventing a Public Authority from fulfilling their duties are void.<sup>1</sup>

An Urban District Council can choose a name for a new street, but section 64, Towns Improvement Clauses Act, 1847, does not empower them to change the names by which streets are known, though they are empowered to re number from time to time, the houses in any street in the district.<sup>2</sup>

Even where the Local Authority possess a power to change names of streets, the Court would restrain them from so doing if satisfied that the proposed change would be injurious to the owners and occupiers of houses in the street.<sup>3</sup>

#### PRIVATE STREETS.

*Streets, Section 150, Public Health Act, 1875—  
Frontagers -- Dedication — The Preliminary  
Notice--Street Sewers--Default--The Owners  
--Service of Notices—The Apportionment--The  
Notice to Dispute--Arbitration--Footpaths—  
Adoption--Church Property--Railway Pro-  
perty--Bridges.*

Any way, with a defined boundary, which is used by the public, may be a street, and a private street is that which is not repairable at the public charge. A new street may be either one which is for the first time laid out or one which by alteration is different

<sup>1</sup> *Ayr Harbour v. Oswald*, 1883, A.C. 623.

<sup>2</sup> *Collins v. Hornsey D.C.*, 1901, 2 K.B. 180.

<sup>3</sup> *Anderson v. Corp. of Dublin*, 1885, 15 Ir.R. 411.

from the street or road which has existed before. In common parlance the term "street" was first applied to a fenced road. "To street out" a highway was to define its limits and indicate them by fences, dike, or ditch.

The highway powers of District Councils are similar in Urban and Rural Districts, but powers to deal with private streets and to make byelaws relating to new streets are not exercised by Rural Councils unless they acquire urban powers.

The repair of private streets at the charge of the "frontagers" may be enforced either under sections 150 and 257, Public Health Act, 1875, or under the Private Street Works Act, 1892.

Where the latter Act is adopted by the Council, section 150, Public Health Act, 1875, cannot be applied. A District Council may enforce the repair of private streets from time to time at the charge of the frontagers until the liability is transferred to the public by formal adoption pursuant to section 152.<sup>1</sup>

The Council when putting section 150 into force must deal with the private street as it is laid out. They are not entitled to alter the respective widths of the carriageway and footway.<sup>2</sup>

Section 150 is as follows :—

"150. Where any street within any Urban District (not being a highway repairable by the inhabitants at large) or the

<sup>1</sup> *Simmonds v. Fulham Vestry*, 1900, 2 Q.B. 189.

<sup>2</sup> *Robertson v. Bristol Corpn.*, 1900, 2 Q.B. 198.

carriageway, footway, or any other part of such street is not sewered, levelled, paved, metalled, flagged, channelled, and made good, or is not lighted to the satisfaction of the Urban Authority, such Authority may, by notice addressed to the respective owners or occupiers of the premises, fronting, adjoining, or abutting on such parts thereof as may require to be sewered, levelled, paved, metalled, flagged, or channelled, or to be lighted, require them to sewer, level, pave, metal, flag, channel, or make good, or to provide proper means for lighting the same within a time to be specified in such notice.

“Before giving such notice the Urban Authority shall cause plans and sections of any structural works intended to be executed under this section, and an estimate of the probable cost thereof, to be made under the direction of their Surveyor, such plans and section to be on a scale of not less than one inch for eighty-eight feet for a horizontal plan, and on a scale of not less than one inch for ten feet for a vertical section, and, in the case of a sewer, showing the depth of such sewer below the surface of the ground ; such plans, sections, and estimate shall be deposited in the office of the Urban Authority, and shall be open at all reasonable hours for the inspection of all persons interested therein during the time specified in such notice ; and a reference to such plans and sections in such notice shall be sufficient without requiring any copy of such plans and sections to be annexed to such notice.

“If such notice is not complied with, the Urban Authority may, if they think fit, execute the works mentioned or referred to therein ; and may recover in a summary manner the expenses incurred by them in so doing from the owners in default, according to the frontage of their respective premises, and in such proportion as is settled by the Surveyor of the Urban Authority, or (in case of dispute) by arbitration in manner provided by this Act ; or the Urban Authority may, by order, declare the expenses so incurred to be private improvement expenses.

“The same proceedings may be taken and the same powers may be exercised in respect of any street or road of which a

part is or may be a public footpath, or repairable by the inhabitants at large as fully as if the whole of such street or road was a highway not repairable by the inhabitants at large."

The expression "frontagers" is a convenient term to describe the owners of premises fronting, adjoining, or abutting on the street. To "adjoin" is to be contiguous to a street, and where the end of premises adjoin a street, they are said to "abut" on it. The frontagers liable to defray expenditure duly incurred under section 150 are those whose premises adjoin that part of the street the repair of which they are notified to execute.

The frontage on which streets intersect is repaired at the charge of the district if the abutting street is dedicated as a part of the street system of the district, although it remains repairable by the frontagers.<sup>1</sup> The dedication negatives the possibility of letting the street at a rack rent, but if the owner of the soil of such a street were to treat it as his property and take payment for its use and repair from occupiers of houses in it, he would be liable to be charged as a frontager.

Premises may abut on two streets, front and back. Want of means of access does not alter the liability,<sup>2</sup> and whether a frontager owns the soil of the street or not is immaterial.<sup>3</sup> Houses standing back -80 feet

<sup>1</sup> *Plumstead v. British Land Co.*, 1875, L.R., 10 Q.B. 203.

<sup>2</sup> *Northbrook v. Plumstead*, 1871, L.R. 7 Q.B. 183.

<sup>3</sup> *Paddington Vestry v. Braniwell*, 1880, 44 J.P., 815; *Newport v. Graham*, 1882, 9 Q.B.D. 183.

<sup>4</sup> *M. of Hartlepool v. Robinson*, 1897, 13 T.L.R. 182.

from a street, if the premises abut on any part of it, form part of it for paving purposes, but their front walls do not govern the street building line.

The liabilities of frontagers should not be confused with questions involving liability to a district rate. A street is paved and made good primarily for the benefit of the owners of lands forming and adjoining it, but rates are raised for the general purposes of the district, purposes which include matters not covered by section 150, Public Health Act, 1875.

The distinction between "dedication" of streets and "adoption" of liability to repair them should be noted. All streets laid out under the Public Health Acts are dedicated to public use, but liability to repair them from time to time lies on the frontagers until they are duly adopted, pursuant to section 152, Public Health Act, 1875, or sections 19 and 20, Private Street Works Act, 1892, by public notice.<sup>1</sup> Streets must be made good to the satisfaction of the Council both in respect of the kind of paving and the quality of the materials they deem suitable for the street, be it asphalt, wood, artificial stone, or other material (section 11 (2), P.H. Act A. Act, 1890).

The service on the frontagers of the preliminary notice as directed by section 150 is the basis of their

<sup>1</sup> *London School Bd. v. St. Mary Islington*, 1875, 1 Q.B.D., 65.

<sup>2</sup> *Barry L.B. v. Parry*, 1895, 2 Q.B. 110. This does not apply to Crown lands, but such expenses are chargeable against local authorities as owners of public recreation grounds. *Fulham v. Minter*, 1901, 1 Q.B. 501. But where streets have been used by the public and repaired at their charge for many years (40), adoption will be presumed. *Leigh-on-Sea v. King*, 1901, 17 T.L.R. 203.

liability to pay the costs of the contemplated private street works,<sup>1</sup> and the Council cannot relieve any owners from liability under section 150 by defraying the expenses incurred out of the General District Rate.<sup>2</sup> The notice may be served on either owners or occupiers, but all the owners or occupiers of the street must be served<sup>3</sup>. The deposit in the Office of the Council of the plans and sections of the proposed work must precede the service of notices on the frontagers. If they have no chance of inspection they are not liable to contribute to the works.<sup>4</sup>

The sewers made under section 150 are street sewers, not those which are laid for the separate drainage of houses, and the levelling is restricted to the surface of the street.<sup>5</sup> It does not, under this Act, include alterations of level done to meet the level of other streets. If any person is liable by reason of tenure of land to repair a highway which has become a street, the District Council may enforce the reparation of the road by the occupier of the land pursuant to section 25 (2) Local Government Act, 1894, in lieu of notifying the frontagers under section 150, or in relief of them to the extent of such work as is included in ordinary repairs.

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<sup>1</sup> *Jarrow L.B. v. Kennedy*, 1870, L.R., 6 Q.B. 128; *Maunder v. Wakefield L.B.*, 1880, 5 C.P.D. 218.

<sup>2</sup> *Dryden v. Overseers of Putney*, 1876, 1 Ex. D. 223.

<sup>3</sup> *Handsworth D.C. v. Derrington*, 1897, 2 Ch. 439.

<sup>4</sup> *Cook v. Ipswich L.B.*, 1871, L.R., 6 Q.B. 451.

<sup>5</sup> Where a street sewer is made to the satisfaction of the Council it vests in them, and the frontagers cannot be called on to make another because it becomes insufficient. *Fulham v. Goodwin*, 1876, 1 Ex. D. 400.



The restrictions contained in the Public Health Acts must be strictly adhered to by the Council, otherwise the frontagers cannot be in default by neglecting to comply with the notices served on them.

### *The Owners.*

Service of notices is not difficult to effect. Documents may be served by delivering them to or at the residence of the person to whom they are addressed, or, where the owner is unknown, notices can be served on anyone on the premises, or, if no one is there, by affixing the notice to some conspicuous part of the premises. The owner's name is of no importance, but he must be owner within the meaning of the Public Health Acts,

*i.e.*, "the person for the time being receiving the rackrent of the lands or premises, whether on his own account or as agent or trustee for any other person, or who would so receive the same if such lands or premises were let at a rackrent."

This interpretation of owner facilitates the enforcement of the provisions of the Public Health Acts.

A rent collector is liable in respect of paying expenses of a street<sup>1</sup>; or a second mortgagee in possession, there being no surplus after the payment of outgoings and the interest of the first mortgage.<sup>2</sup> Where section 150 is enforced, the frontagers may execute the required works under the supervision of

<sup>1</sup> *M. of St. Helens v. Kirkham*, 1885, 16 Q.B.D. 403.

<sup>2</sup> *Tottenham L.B. v. Williamson*, 1893, 62 L.J., Q.B.D. 322.



the Surveyor of the Council, but street works may be done by agreement between frontagers and a District Council, without resorting to the formalities prescribed by section 150.<sup>1</sup> The Council have a discretion about executing the street works, and they can abandon the scheme.

*The Apportionment—The Notice to Dispute.*

Where a first apportionment is invalid a second may be made,<sup>2</sup> but if a frontager intends to dispute the validity of an apportionment he must notify the Council in writing within three months after service of the notice of the amount apportioned, otherwise it is binding and conclusive on him (section 257, Public Health Act, 1875).

The conclusiveness of the apportionment relates only to the amount. It does not fix legal liability which does not otherwise exist.<sup>3</sup> The sum apportioned is recovered by summary proceedings, and then an owner can dispute the facts from which legal liability arises, *e.g.*, that he is not owner of the premises, or that the preliminary notice was not duly served. Thus an owner can, under section 150, reserve a question of legal liability till summary proceedings are taken.<sup>4</sup>

"Section 257. Where such expenses have been settled and apportioned by the surveyor of the local authority as payable

<sup>1</sup> Hall v. Batley, 1861, 37 L.T. 310.

<sup>2</sup> Cook v. Ipswich L.B., 1871, L.R., 6 Q.B. 451.

<sup>3</sup> Hesketh v. Atherton L.B., 1873, L.R., 9 Q.B. 4.

<sup>4</sup> Seabrook v. Grays Thurrock L.B., 1891, 8 T.L.R. 19.

by such owner, such apportionment shall be binding and conclusive on such owner unless within three months from service of notice on him by the local authority or their surveyor of the amount settled by the surveyor to be due from such owner, he shall, by written notice, dispute the same."

On the District Council lies the burden to prove that Justices have jurisdiction to make an order against a defaulting owner, and that the preliminary notice was duly served in respect to premises, of which a defendant is owner, in a private street within the district<sup>1</sup>; or give sufficient proof to establish a *prima facie* case of liability.<sup>2</sup>

If a valid notice to dispute is given in time the District Council must go to arbitration before they can recover the sum apportioned. A notice which has a double meaning may be disregarded<sup>3</sup>; but if an intention to dispute the amount is indicated, the notice is not invalid because expressed to be based on some invalid ground, *e.g.*, where the frontager states that he is not liable at all, and, if the Council choose to treat a notice as valid they cannot afterwards contest its sufficiency.<sup>4</sup>

The matters referred to arbitration include all disputes that may arise as to the proportion to be borne by a frontager. The certificate of the Surveyor as to the total amount of the expenditure and the items of it cannot be investigated by the arbitrator<sup>5</sup>.

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<sup>1</sup> Wake *v.* M. of Sheffield, 1883, 17 Q.B.D. 147.

<sup>2</sup> Eccles *v.* Worral R.S.A., 1886, 17 Q.B.D. 112.

<sup>3</sup> M. of Folkestone *v.* Brooks, 1893, 3 Ch. 22.

<sup>4</sup> Sandgate L.B. *v.* Keene, 1892, 1 Q.B. 831.

<sup>5</sup> Cawston *v.* Bromley U.D.C., 1900, 17 T. 27.

The award is final and binding on the parties. Objections to the validity of the proceedings of the Council must be raised before the award is made,<sup>1</sup> then the arbitrator can state a case on any legal point for the opinion of the High Court.

### *Footpaths.*

The last paragraph of section 150 relates to the exercise of the powers to enforce repairs of a private street where it is formed in part by a public footpath or where a part of it is repairable at the public cost. In such case the same powers may be exercised against the frontagers, but this would not appear to make them responsible for the repair of that part of the street which is already repairable by the public; however, the High Court in *Evans v. Newport U.S.A.*, 24 Q.B.D. 264, have decided otherwise, so that where a narrow street is widened by the addition of land on one side, the cost of repair of the whole street may be apportioned on the frontagers. The result might be avoided because the District Council are entitled to deal with the new space thrown into a street as fully as if it formed the whole street.

Footpaths dedicated before the Highway Act, 1835, came into force, are repairable at the public cost. Later dedications do not entail liabilities on the Highway Authority, and in Urban Districts all

<sup>1</sup> *Handsworth v. Derrington*, 1897, 2 Ch. 438.

<sup>2</sup> *Richards v. Keswick*, 1888, 59 L.T. 313.

dedications of land are subject to the byelaws in force.

The vesting of a road in the Council before it is made a new street does not affect the power to deal with it as the roadway of a private street. Lapse of time does not operate as adoption, nor does the voluntary execution of temporary repairs, which is done for convenience, with reference to wear of existing traffic.

### *The adoption of Private Streets.*

In no case can the liability to repair a private road or street be cast upon the public without the formal expression of the satisfaction of the Council with the condition of the surface works. A highway in a rural parish may be dedicated without the sanction of the District Council. Its dimensions are not subject to byelaws like streets that must be laid out of the width required by the byelaws in force, and constructed in the prescribed mode and of the prescribed materials.

The adoption of highways in Rural Districts is effected under section 23, Highway Act, c. 835. After three months' notice to the Highway Authority, who, if satisfied that the road is constructed in a substantial manner and of the width required by the Act, are to notify two Justices to view the highway and to certify that the Act has been complied with. This certificate must be "enrolled" at the

Quarter Sessions holden next after the view of the Justices. The "enrolment" is effected by delivery of the certificate to the Clerk of the Peace to be deposited with the County records. Under the Highway Act, 1835, carriageways leading to a market town are required to be 20 feet wide, bridlevays to be eight feet wide, and footways at the side of carriageways three feet wide (section 80, 5 & 6 Will. 4, c. 50), and any highway which two Justices consider inconveniently narrow, may by their order be widened to a breadth of 30 feet, at the expense of the District Council (section 82, 5 & 6 Will. 4, c. 50). It has been contended that procedure under section 23, Highway Act, 1835, is not superseded by section 152, Public Health Act, 1875, which prescribes the formalities of adoption of liability to repair private streets, but street width must be provided and construction suited for town traffic before the Urban District Council will consent to adopt, so the point may be disregarded.<sup>1</sup> However, the Highways Acts are only applicable to District Councils acting as Surveyors when the provisions of those Acts are not inconsistent with powers conferred by the Public Health Acts.

Section 152 of the Public Health Act, 1875, is as follows :—

" 152. When any street within any Urban District not being a highway repairable by the inhabitants at large has been sewered, levelled, paved, flagged, metalled, channelled, and

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<sup>1</sup> Q. v. Dukinfield, 1863, 4 B. & S. 153.

made good and provided with proper means of lighting to the satisfaction of the Urban Authority, such Authority may, if they think fit, by notice in writing put up in any part of the street, declare the same to be a highway, and thereupon the same shall become a highway repairable by the inhabitants at large; and every such notice shall be entered among the proceedings of the Urban Authority.

“Provided that no such street shall become a highway so repairable, if within one month after such notice has been put up the proprietor or the majority in number of proprietors of such street, by notice in writing to the Urban Authority, object thereto, and in ascertaining such majority joint proprietors shall be reckoned as one proprietor.”

Under this section *all* the private street work enumerated must be executed at the expense of the frontagers before the District Council are empowered to declare it a highway repairable by the ratepayers. This requirement is modified in districts where Part 3 of the Public Health Acts Amendment Act, 1890, is adopted. Section 41 then operates in lieu of section 152 of the Act of 1875, and a street or part of a street may be adopted whenever all or *any* of the private street work mentioned in section 150 have been done at the expense of the frontagers. For example, if a private street has been sewered at the expense of the frontagers, the Act of 1890 enables the Council to adopt the street and execute all other private street works at the charge of the district. The proviso to section 152 is re-enacted in the Act of 1890, so under either Act a majority of frontagers may prevent adoption by the Council. Under the Private Street Works Act, 1892, this rule does not prevail.

*Church Property.*

The interpretation of premises in section 4 of the Act includes all buildings and lands to whatever use devoted, but the ownership of premises devoted to sacred uses in perpetuity is not enhanced in value by the execution of private street works, hence the reason ceases for charging such expenditure on those in possession. The consecration of churches and churchyards places them extra commercium, a legal incapacity to demise them exists, and it is not possible to predicate of them that they can at some time be let, hence there can be no owner chargeable as a frontager under section 150.<sup>1</sup> Section 151, Public Health Act, 1875, extends the exemption of consecrated premises to all places appropriated to public religious worship, which were in 1875 by law exempt from rates for the relief of the poor. The Poor Rate Exemption Act, 1839, sections 1 and 2, exempts from poor rates churches, chapels, meeting houses or premises, or such part thereof, as shall be exclusively appropriated to public religious worship, and which shall be duly certified for the performance of such religious worship according to the provisions of any Act in force : provided that the exemption shall not cease because any part of the premises may be used for Sunday or infant schools, or for the charitable education of the poor. The Sunday and Ragged

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<sup>1</sup> See *Wright v. Ingle*, 1888, 16 Q.B.D. 379, where this question is discussed in the Court of Appeal.



Schools Exemption from Rating Act, 1869, empowers any Rating Authority to exempt from assessment to rates any school used for giving religious education gratuitously to children, and to schools used for the gratuitous education of children of the poorest classes, without payment except to the teachers employed.

This exemption does not extend to open spaces and pleasure grounds set out for public use by a Public Authority.<sup>1</sup> Nor to land used for burial purposes by a Cemetery Company. The owners are liable as frontagers to contribute to private street expenses.<sup>2</sup>

Section 151, Public Health Act, 1875, is as follows :—

“ 151. The incumbent or minister of any church, chapel, or place appropriated to public religious worship, which is now by law exempt from rates for the relief of the poor, shall not be liable to any expenses under the last preceding section, as the owner or occupier of such church, chapel, or place, or of any churchyard or burial ground attached thereto, nor shall any such expenses be deemed to be a charge on such church, chapel, or other place, or on such churchyard or burial ground, or to subject the same to distress, execution, or other legal process; and the Urban Authority may, if they think fit, undertake any works from the expenses of which any such incumbent or minister is hereby exempted.”

Trustees are not exempted, and as all places of worship belonging to Nonconformist and Roman Catholic communities are vested in trustees, the exemption of the minister or priest amounts to

<sup>1</sup> Fulham Vestry v. Minter, 1901, 1 Q.B. 501.

<sup>2</sup> St. Giles, Camberwell v. London Cemetery Company, 1894, 1 Q.B. 699.



nothing.<sup>1</sup> This may not have been intended, and the Private Street Works Act, 1892, section 16, extends the exemption to trustees, and the sum which would otherwise be apportioned on them as owners is thrown on the General District Rate, leaving no option with the District Council.

Thus doubt as to application of exemption under the latter Act can only arise where a question arises as to the exclusive appropriation of the premises to purposes of public religious worship. In the *Hornsea* case, buildings under the chapel had been utilised for holding bazaars; so, had the minister been owner, the claim to be within the exemption would have failed on that account. The practice of using buildings attached to churches for entertainments should not be followed until the street in which they front becomes repairable by the Council, for the appropriation of profits of the entertainment to charitable uses is not a purpose of public religious worship.

Inability to enforce the charge on the premises by means of a sale does not defeat the operation of the Act. A charge may exist which cannot be enforced. Thus, where land is conveyed to trustees under section 6 of the School Sites Act, 1841, there is a statutory dedication to free school purposes, and the land cannot be let at a rackrent. To effect the sale an Act of Parliament would have to be passed. Nevertheless, the trustees are held to be owners, on

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<sup>1</sup> *Brewis v. Hornsey L.B.*, 1891, 64 L.T. 288.

whom liability to contribute to private street works attaches.<sup>1</sup>

### *Railway Property and Bridges.*

Where railways or canals adjoin private streets, the Company are liable to contribute to the expenses of street repairs done under section 150, according to the length of frontage of the line or canal. The erection of a fence at the side of the street and non-user of access does not alter the liability.<sup>1</sup> If a railway bank or cutting or fabric of a viaduct or a towing-path adjoin liability attaches to the Company as frontagers;<sup>2</sup> but where a railway ran in a deep cutting, and a street was carried over it by a bridge built by the Company pursuant to the Railway Clauses Act, 1845, it was decided that the company were not liable either as owners of the parapet or of the land forming that cutting.<sup>3</sup> It is not easy to see why a railway in a cutting made across a street does not abut on the frontage of the bridge just as much as a line in a cutting made at the side of a street; but the House of Lords declined to burden the company, because they owned the parapet of the bridge abutting on the street, as owners of land which might be let at a rackrent.

Where the Private Street Works Act, 1892, is in force in lieu of section 150, railway and canal com-

<sup>1</sup> Hornsey D.C. v. Smith, 1896, 2 Ch. 259.

<sup>2</sup> R. v. Newport L.B., 1863, 3 B. & S. 341.

<sup>3</sup> Higgins v. Harding, 1872, L.R. 8 Q.B. 7.

<sup>4</sup> G.E. Ry. v. Hackney B. of W., 1883, 8 A.C. 695.

panies escape assessment to private street works unless they use a direct means of communication with the street, and the whole of the expenses incurred by the District Council fall on the other frontagers for the time being. Section 22 of the Public Street Works Act, 1892, is as follows :—

“No railway or canal company shall be deemed to be an owner or occupier for the purposes of this Act in respect of any land of such company upon which any street shall wholly or partially front or abut, and which shall at the time of the laying out of such street be used by such company solely as a part of their line of railway, canal, or siding, station, towing-path, or works, and shall have no direct communication with such street ; and the expenses incurred by the Urban Authority under the powers of this Act which, but for this provision, such company would be liable to pay, shall be repaid to the Urban Authority by the owners of the premises included in the apportionments, and in such proportion as shall be settled by the surveyor ; and in the event of such company subsequently making a communication with such street they shall, notwithstanding such repayment as last aforesaid, pay to the Urban Authority the expenses which, but for the foregoing provision, such company would in the first instance have been liable to pay, and the Urban Authority shall divide among the owners for the time being included in the apportionment the amount so paid by such company to the Urban Authority, less the costs and expenses attendant upon such division, in such proportion as shall be settled by the surveyor, whose decision shall be final and conclusive. This section shall not apply to any street existing at the date of the adoption of this Act.”

By section 46, Railway Clauses Act, 1845, a duty to maintain roads on bridges which are constructed to carry highways over a railway is cast on the company for all time. They have to metal the road on a

bridge and the approaches to it.<sup>1</sup> The interpretation of "street" in the Public Health Act, 1875, includes bridges other than county bridges. Default by a Company to repair a road may be enforced under section 150, and default to maintain the fabric of a bridge may be enforced by mandamus.<sup>2</sup> Where a railway is carried by a bridge over a highway they are not liable to repair the road under the line; and where they lower the level of the highway they are not bound to keep in repair the slope made in the highway on either side of the line as being part of the approaches on each side of the bridge.<sup>3</sup>

*The Private Street Works Act, 1892, the Provisional Apportionment—Objections—Determination by Justices—Settlement of Amount of Apportionment—Final Apportionment—Objections—Recovery of Expenses—The Charge on the Premises—Private Improvement Expenses—Rates, Taxes, and Assessments.*

The adoption of the Private Street Works Act, 1892, enables a District Council to adjust the burden of expenditure incurred about private street works to the benefits derived from their execution by the property charged, and provides for the determination of any dispute about the liabilities of the owners of

<sup>1</sup> L. & Y. Ry. v. Bury, 1889, 14 A.C. 417.

<sup>2</sup> R. v. S.E. Ry., 1875, 32 L.T. 858, where the return to the writ is set out.

<sup>3</sup> Fosbury v. Waterford Ry., 13 Ir.C.L. 494; L. & N.W. Ry. v. Skirton, 1864, 5 B. & S. 559.

the property so charged before the District Council undertake the works ; and when the expenses incurred are finally apportioned they can be recovered by action from the owner of the premises for the time being at any time within six years after the date of the final apportionment (section 14) ; whereas under the Public Health Act, 1875, if the Council omit to recover the expenses within six months after demand of the sum apportioned, they have to enforce the charge on the premises. Rural District Councils may be invested by the Local Government Board with the powers conferred by the Act of 1892 (section 4, *ib.*). The proceedings of the Council preliminary to the enforcement of the Act of 1892 is set out in section 6 :—

“ 6.—(1) Where any street or part of a street is not sewered, levelled, paved, metalled, flagged, channelled, made good, and lighted to the satisfaction of the Urban Authority, the Urban Authority may from time to time resolve with respect to such street or part of a street to do any one or more of the following works (in this Act called private street works) ; that is to say, to sewer, level, pave, metal, flag, channel, or make good, or to provide proper means for lighting such street or part of a street ; and the expenses incurred by the Urban Authority in executing private street works shall be apportioned (subject as in this Act mentioned) on the premises fronting, adjoining, or abutting on such street or part of a street. Any such resolution may include several streets or parts of streets, or may be limited to any part or parts of a street.

“ (2) The surveyor shall prepare, as respects each street or part of a street—

“ (a) A specification of the private street works referred to in the resolution, with plans and sections (if applicable) ;

“(b) An estimate of the probable expenses of the works ;

“(c) A provisional apportionment of the estimated expenses among the premises liable to be charged therewith under this Act.

Such specification, plans, sections, estimate, and provisional apportionment shall comprise the particulars prescribed in Part I. of the Schedule to this Act, and shall be submitted to the Urban Authority, who may by resolution approve the same respectively with or without modification or addition as they think fit.

“(3) The resolution approving the specifications, plans, and sections (if any), estimates, and provisional apportionments, shall be published in the manner prescribed in Part II. of the Schedule to this Act, and copies thereof shall be served on the owners of the premises shown as liable to be charged in the provisional apportionment within seven days after the date of the first publication. During one month from the date of the first publication the approved specifications, plans, and sections (if any), estimates, and provisional apportionments (or copies thereof certified by the surveyor), shall be kept deposited at the Urban Authority offices, and shall be open to inspection at all reasonable times.

There are to be two resolutions of the Council. When the first is passed the surveyor prepares the specifications, plans, and sections of the proposed works, showing the prescribed particulars, viz. :—

“*Specifications.*—To describe generally the works and things to be done, and, in the case of structural works, to specify as far as may be the foundation, form, material, and dimensions thereof.

“*Plans and Sections.*—To show the constructive character of the works and the connections with existing streets, sewers, or other works, and the lines and levels of the works, subject to such limits of deviation as shall be indicated on the plans and sections respectively.

“*Estimates.*—To show the particulars of the probable cost of the whole works, including the commission provided for by the Act.”

The second resolution approving of the specifications and estimate, &c., must be published once in each of two successive weeks in some local newspaper circulating within the district, and must be publicly posted in or near the street to which it relates once in each of three successive weeks.

The resolution of the Council may relate to one or more of the private streets which they resolve should be made good from time to time, and they may be dealt with as a part of the street system of the district so as to include incidental works necessary to bring a street into conformity with the gradients of sewerage, drainage, level and other matters in any other streets in the district, including the provision of separate sewers for the reception of sewage and of surface water (section 9, P.S.W. Act, 1892), whereas under section 150 of the Act of 1875 a private street was dealt with as if isolated and no way connected with the street system of the district.<sup>1</sup> A sum of 5 per cent. on the amount of the estimated expenditure on private street works may be added to the estimated actual cost and apportioned on the owners liable as frontagers.

During one month after publication of the specifications, estimates, and provisional apportionments, any owner of premises shown thereby to be charged may, by written notice served on the Council, object to the proposed works on grounds specified in section 7 of the Act of 1892. When notice of

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<sup>1</sup> See *Cary v. Kingston-on-Hull*, 1865, 11 L.T. 339.



objection is duly given, the Council, unless they abandon the intended works, must apply to a court of summary jurisdiction to determine the matter of all objections, and all notices being duly served, the court on the day fixed will hear and determine them (section 8).

### *Objections to Proposed Works.*

A frontager may object to the proposal of the Council on any of the following grounds :—

- “(a) That an alleged street or part of a street is not or does not form part of a street within the meaning of the Act ;
- “(b) That a street or part of a street is (in whole or in part) a highway repairable by the inhabitants at large.
- “(c) That there has been some material informality, defect, or error in, or in respect of the resolution, notice, plans, sections, or estimate ;
- “(d) That the proposed works are insufficient or unreasonable, or that the estimated expenses are excessive ;
- “(e) That any premises ought to be excluded from or inserted in the provisional apportionment ;
- “(f) That the provisional apportionment is incorrect in respect of some matter of fact to be specified in the objection, or (where the provisional apportionment is made with regard to other considerations than frontage as herein-after provided) in respect of the degree of benefit to be derived by any person<sup>s</sup>, or the amount of value of any work already done by the owner or occupier of any premises.”

These grounds of objection will be noticed as enumerated, and first of that which is based on the



limitation or extension of the meaning of the word "street" for the purposes of the Act.

The Council may wholly misapprehend their duties in respect of repair of a street; they deem the frontagers liable to repair where in fact the street is a highway repairable by the inhabitants at large. Yet the owner must object if he means to avoid liability as a frontager. For by section 8 (2):—

"No objection which could be made under this Act shall be otherwise made or allowed in any court, proceeding, or manner whatsoever."

Where an objection is duly made that a street is repairable at the public charge, it will rest with the Council to show grounds from which it may be inferred that the liability lies on the owners of the premises. The objector must then rebut such inference. This may be by proof that the Council or their predecessors have been compelled to repair the street, or that the liability was cast on the public by order of the Justices under the Highway Acts, or that the public right of user existed before 1836.<sup>1</sup> If the street is in part repairable by the public, as where a public footpath runs through it, the objector must establish the fact. The expenditure on that part of the street which the public are bound to repair is not to be cast on the owners. Where this objection is established the Justices amend the resolution and plans of the Council by limiting the scheme to the rest of the street, and the Council can then carry out the amended scheme without

<sup>1</sup> This does not apply where the District Council provide the site of a new street and construct it themselves at the public charge.

passing another resolution or issuing fresh notices.<sup>1</sup> Where an amendment substantially affects the interests of frontagers who have not objected, Justices can adjourn the hearing and direct further notices to be given.

Informalities as a basis of objection must depend wholly on special circumstances—want of publication, want of sanction of a quorum of the Council, want of due service of the notices, or neglect to prepare the plans, sections, and estimates according to the prescribed rules.

Works are insufficient where they are inadequate to provide for maintenance and repair or drainage of the street for which they are provided. The execution of works may be unreasonable with reference to the existing state of repair of the street or the sanitary works. Thus, where the Council resolve to sewer a street, the drainage of the houses being already provided for, and the only thing requiring a sewer being sink water,<sup>2</sup> or that works should not be done at all, and that the Council should not have approved of the scheme. Insufficiency as a basis of objection relates to sufficiency of the works to effect the purpose proposed to be effected by them. The general question of desirability of improving the street at the time is left to the judgment of the Council,<sup>3</sup> but whether the proposed works are reasonable may depend on the existing state of similar works in the street. If

<sup>1</sup> Twickenham U.D.C. v. Munton, 1899, 2 Ch. 603.

<sup>2</sup> C. of Sheffield v. Alexander, 1894, 72 L.T. 242.

<sup>3</sup> M. of Mansfield v. Butterworth, 1898, 2 Q.B. 275.

there is an effectual sewer it is unreasonable to make another. The Court of Summary Jurisdiction can consider that.<sup>1</sup> The expenses of private street works are ordinarily apportioned according to the respective lengths of the properties which front and abut on the street ; but the Council may, if they think fit, resolve that the apportionments shall be settled with reference to the following considerations (section 10, P.S.W. Act, 1892) :—

“(a.) The greater or less degree of benefit to be derived by any premises from such works ;

“(b.) The amount and value of any work already done by the owners or occupiers of any such premises.

“ They may also, if they think just, include any premises which do not front, adjoin, or abut on the street or part of a street, but access to which is obtained from the street through a court, passage, or otherwise, and which in their opinion will be benefited by the works, and may fix the sum or proportion to be charged against any such premises accordingly.”

As in the case of frontagers who front, adjoin, or abut, so in this case the owners can rectify, before the Justices, an error of the Council in respect of some matter of fact. Yards and courts standing behind houses which abut on a street, and communicating therewith by a passage, are in the street, and where the sole egress from the yard or court is through the street, the premises obviously benefit by the street works.<sup>2</sup> If the Council omit to include such premises in a scheme any owner charged in the provisional apportionment can object.

<sup>1</sup> *C. of Sheffield v. Anderson*, 1894, 64 L.J.M.C. 44.

<sup>2</sup> *London S.B. v. Islington*, 1875, 1 Q.B.D. 65.

Incorreetness depending on matters of faet may relate to measurement of frontage and boundaries of property, or that the surveyor has not prepared the apportionment of the expenses in respect of each street or part of a street, embraced by the scheme; for, although the resolution of the Councel may embrace several streets in one scheme, the surveyor must deal with each street separately in making the apportionments.

If by an amendment of the estimate and provisional apportionments the total amount of the estimate relating to any street is increased, a republication and posting are necessary, and owners can object in the same way as against the original estimate and apportionment. And after the works are completed and the final apportionment made, and notice thereof served on the owners, they have again a right of objecting within one month, on any of the following grounds :—

“(a.) That the actual expenses have, without sufficient reason, exceeded the estimated expenses by more than 15 per cent.

“(b.) That the final apportionment has not been made by dividing the expenses in the same proportion in which the estimated expenses were divided in the original or amended provisional apportionment.

“(c.) That there has been an unreasonable departure from the specifications, plans, and sections (sections 11, 22, P.S.W. Act, 1892.”

Objections to the final apportionment may be determined by Justices, and the costs of the proceedings are in their discretion, and, if ordered to be paid by an objector, are, in the first instance,

to be paid by the Council and charged as part of the expenses of the works on the premises of the objector (section 8).

### *Recovery of Expenses.*

The amount of the expenses incurred and apportioned by the Surveyor of the District Council, or in case of dispute fixed by arbitration, may be recovered (1) from the owners by summary proceedings before justices ; or (2) as a debt from time to time from the owner for the time being in any court of competent jurisdiction. Sums not exceeding 50*l.* are recoverable in the County Court and above that sum in the High Court, and the debt is recoverable within six years next after the final apportionment ; or (3) by instalments from the owners or occupiers in the same manner as private improvement expenses (section 12, P.S.W. Act, 1892). Where the summary remedy before Justices is enforced the six months during which it is available runs from the demand made for payment, which may be delayed till the whereabouts of an owner is known ; but where the expenses are recovered as a debt under the Act of 1892, the six years during which the remedy is available runs from the date of the final apportionment. The notice of demand may be in any form which clearly indicates a demand of payment.<sup>1</sup> Owners in default are liable to pay interest at 5 per cent. on their apportionments under the Act of 1875, and 4 per cent. under that of 1892.

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<sup>1</sup> N.B. Ry. v. Holme Cultram L.B., 1889, 51 J.P. 86.

*The Charge on the Premises.*

Section 257 of the Act of 1875 is to the following effect :—

“Where a Local Authority have incurred expenses, for the repayment whereof the owner of the premises for or in respect of which the same are incurred, is made liable under this Act, or by agreement with the Local Authority, such expenses may be recovered, together with interest, at a rate not exceeding 5*l.* per cent. per annum, from the date of service of a demand for the same till payment thereof, from any person who is the owner of such premises when the works are completed for which such expenses have been incurred, and until recovery of such expenses and interest the same shall be a charge on the premises in respect of which they were incurred.”

It has, however, been doubted whether any charge was imposed until the owners were made liable by an order of Justices.<sup>1</sup>

The statutory charge is imposed on the premises shown to be liable and this may be enforced at any time within 12 years after the right to receive the money secured by the charge accrued ; that is from the date of completion of the works ;<sup>2</sup> so the Council ought to record that date with care. Charges under 10*l.* must be enforced in the County Court.<sup>3</sup> The charge may be enforced during the 12 years against the owner of the premises for the time being,<sup>4</sup> for the whole amount, or where the Council declare the expenses to be payable by annual instalments, for the amount of the instalments for the time being in

<sup>1</sup> See Lord Esher in *Willesden L.B. v. Wright*, 1896, 75 L.T. 13.

<sup>2</sup> *Hornsey L.B. v. Monarch Invest. Co.*, 1889, 24 Q.B.D. 1.

<sup>3</sup> *Westbury-on-Severn v. Meredith*, 1885, 30 C.D. 387.

<sup>4</sup> *Mayor of Sunderland v. Alcock*, 1882, 16 L.T. 377.

arrear.<sup>1</sup> All interests in the ownership of the premises are charged in proportion to their respective value,<sup>2</sup> and all persons having such interest should be made parties to the action;<sup>3</sup> but such an interest does not include a restrictive covenant in regard to building, so the person entitled to the benefit thereof should not be made a party to the action, and the land must be sold subject to the covenant.<sup>4</sup>

Statutory charges do not require registration under the Land Charges Registration Act 1888.

Section 13 of the Private Street Works Act, 1892, provides that—

“13.—(1.) Any premises included in the final apportionment, and all estates and interests from time to time therein, shall stand and remain charged (to the like extent and effect as under section two hundred and fifty-seven of the Public Health Act, 1875) with the sum finally apportioned on them or if objection has been made against the final apportionment with the sum determined to be due as from the date of the final apportionment, with interest at the rate of four pounds per centum per annum, and the Urban Authority shall, for the recovery of such sum and interest, have all the same powers and remedies under the Conveyancing and Law of Property Act, 1881, and otherwise as if they were mortgagees having powers of sale and lease and of appointing a receiver.

“(2.) The Urban Authority shall keep a register of charges under this Act and of the payments made in satisfaction thereof, and the register shall be open to inspection to all persons at all reasonable times on payment of not exceeding one shilling in respect of each name or property searched for, and the Urban Authority shall furnish copies of any part of

<sup>1</sup> *Tottenham Local Board v. Rowell*, 1880, 15 C.D. 378.

<sup>2</sup> *Corporation of Birmingham v. Baker*, 1881, 17 C.D. 782.

<sup>3</sup> *Ibid.*

<sup>4</sup> *Tendring Union v. Downton*, 1891, 3 Ch. 265.



such register to any person applying for the same on payment of such reasonable sum as may be fixed by the Urban Authority."

This section enables the District Council to enforce the charge on the premises without an action for a declaration of a charge and an order for sale by a court.

The powers of mortgagees under the Conveyancing and Law of Property Act, 1881, are set out in sections 18 to 24. A mortgagee cannot exercise his powers of sale until notice demanding payment of the mortgage debt has been served on the mortgagor or one of several mortgagors, and default has been made in payment for three months after such notice, or (2) until the interest under the mortgage is in arrear and unpaid for two months after becoming due. A mortgagee entitled to appoint a receiver is not to do so until he has become entitled to exercise the power of sale conferred by the Act. Mortgagees in possession may exercise the power to lease.

### *The Private Improvement Expenses.*

Expenses incurred by District Councils, or for which they have become liable in the execution of works for the benefit of owners of property, may be declared to be private improvement expenses. Expenses incurred under sections 23, 36, 41, and 62, Public Health Act, 1875, under section 19, Public Health Acts Amendment Act, 1890, under section 3, Public Health (Water) Act, 1878, and under section



150, Public Health Act, 1878, may be so declared and recovered. Sanitary arrangements of premises, water supply, the abatement of nuisances, and expenditure on private street works, both in Urban and Rural Districts, and incurred under the Public Health Act, 1875, or the Private Street Works Act, 1892, may be assessed to the private improvement rate levied pursuant to sections 213 and 232, Public Health Act, 1875 :—

“ 213. Whenever an Urban District Council have incurred or become liable to any expenses which by this Act are or by such Authority may be declared to be private improvement expenses, such Authority may, if they think fit, make and levy on the occupier of the premises in respect of which the expenses have been incurred, in addition to all other rates, a rate or rates to be called private improvement rates, of such amount as will be sufficient to discharge such expenses, together with interest thereon at a rate not exceeding five pounds per centum per annum, in such period not exceeding thirty years as the Urban Authority may in each case determine.

“ Provided that whenever any premises in respect of which any private improvement rate is made become unoccupied before the expiration of the period for which the rate was made, or before the same is fully paid off, such rate shall become a charge on and be paid by the owner for the time being of the premises so long as the same continue to be unoccupied.”

Section 232 confers similar powers on Rural Councils, but where such Councils are invested with urban powers by the Local Government Board, in regard to repair of private streets pursuant to the Public Health Acts or the Private Street Works Act, 1892, they do not acquire urban rating powers

for the purpose of defraying expenses thereby incurred, unless the order so specifies.<sup>1</sup>

An agreement to pay all rates, taxes, and assessments does not include charges for private street works.<sup>2</sup>

Expenses for abating nuisances and for drainage and other works done on the premises differ from paving and works done in a street. "Rates, taxes, and assessments" relate to assessments for expenditure for temporary reparation rather than to charges imposed in respect of expenditure incurred about works of a permanent kind. Hence, an agreement by a tenant "to pay all rates, taxes, and assessments whatsoever which now are or during the term shall be imposed or assessed on the premises or the landlords or tenants in respect thereof, by authority of Parliament, or otherwise, except the landlord's property tax," does not include expenses incurred for private street works, pursuant to section 150, Public Health Act, 1875.<sup>3</sup>

If a tenant agrees to pay all "charges," he will have to recoup to his landlord an apportionment imposed on him for private street works,<sup>4</sup> and the word "duties"<sup>5</sup> "or outgoings"<sup>6</sup> have the same effect.

<sup>1</sup> *Lancas. & Yorks. Ry. v. Bolton Union*, 1890, 15 A.C. 323.

<sup>2</sup> *Wilkinson v. Collier*, 1884, 13 Q.B.D. 1.

<sup>3</sup> *Baylis v. Jiggins*, 1898, 2 Q.B. 315.

<sup>4</sup> *Hartley v. Hulson*, 1879, 4 Q.P.D. 367.

<sup>5</sup> *Budd v. Marshall*, 1880, 5 Q.P.D. 480.

<sup>6</sup> *Aldridge v. Ferne*, 1886, 17 Q.B.D. 212.

Where District Councils retain the powers and duties to maintain and repair main roads the County Council recoup them for all expenditure made for highway purposes on a main road, whether for local or through traffic. The decisions of the Courts establish :—

- (1.) The County Council are liable to make an annual payment towards the cost of the maintenance and repair and reasonable improvement connected with the maintenance and repair of all parts of the main road, the footpaths, and crossings, whether gravelled, paved or asphalted.
- (2.) The County Council are liable to contribute an annual sum towards the cost of scavenging, cleansing, and watering main roads in so far as such scavenging and cleansing are necessary for maintenance and repair as distinguished from sanitary purposes.
- (3.) The County Council are not liable for the lighting of main roads.
- (4.) If the District Council alter the paving or flagging of the footways by substituting asphalt or wood, or other substance, the County Council must make an annual payment in so far as the alteration is a reasonable improvement connected with maintenance and repair.
- (5.) In respect of loans contracted by District Councils and interest of loans borrowed for maintenance of main roads the whole amount is charged on the County Council, to be discharged in the same way as the District Council are liable to repay it.<sup>1</sup>

<sup>1</sup> Warminster case, 1890, 25 Q.B.D. 450 ; Burslem v. Stafford C.C., 1896, 1 Q.B. 24 ; Derby C.C. v. Matlock Bath, 1896, A.C. 315.



## CHAPTER 6.

## LIGHTING.

*Gas Supply by Companies—Public Lamps—Cutting off Supply—Nuisance by Gasworks.*

By the Public Health Act, 1875, section 161, Urban Authorities are empowered to contract for a supply of gas or other means of lighting public places and buildings within their district, and to provide the necessary lighting apparatus, and where there is not a company authorised to supply gas for public and private purposes, the District Council may themselves undertake to supply gas for public and private purposes. This protects the statutory monopoly of a gas company, and enables the Council to supply gas within their district, or other means of lighting it; but if they want to be invested with the powers of the Gasworks Clauses Acts, they must obtain a Provisional Order from the Local Government Board. The cost of lighting public places is a general expense, but the charges made to private consumers cannot be recovered without the powers of the Gas Acts. All the rights, powers, and privileges of any gas

company may be bought, and the members are empowered, by a resolution duly passed, to transfer, on such terms as may be agreed on, the undertaking to the Council (section 162).

By the Gasworks Clauses Act, 1847, section 16, the undertakers of gasworks are empowered to cut off the gas from the premises of any person for non-payment of rent due for gas supplied to him. By the Gasworks Clauses Act, 1871, section 11, it is made compulsory upon the undertakers when required by owners or occupiers of any premises within the prescribed limits to supply gas to such premises, and by section 39, in case any consumer leaves the premises where gas has been supplied to him without paying the gas rent, the undertakers shall not be entitled to require from the next tenant of such premises the payment of the arrears left unpaid by the former tenant. If there is a change of occupancy, payment of arrears cannot be enforced before furnishing a supply of gas.

The appointment of an official receiver pursuant to bankruptcy proceedings does not change occupancy;<sup>1</sup> nor does the appointment by the High Court in a debenture holder's action of a receiver of the business of a company.<sup>2</sup>

Where a company, authorised by Act, supply gas in the district, the Gasworks Clauses Act, 1847,

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<sup>1</sup> *In re Smith*, 1893, 1 Q.B. 323.

<sup>2</sup> *Patterson v. Gas L. and Coke Co.*, 1896, 2 Ch. 476.

empowers them, after due notification and deposit of plan of proposed works and position of mains, to break up streets under the superintendence of the officers of the District Council (sections 6, 8, and 9, G.W. Cl. Act, 1847).

If a consumer fails to pay the gas rents due, the supply may be stopped by cutting off the service pipe or by other means.

Section 23 of the Gasworks Clauses Act, 1871, is as follows :—

“In case any person who shall have been supplied with gas by the undertakers shall neglect or refuse to pay the amount due in respect of such supply, any Justice may issue his summons to such person, requiring him to appear at a time and place named therein, and then and there to show cause why the sum so demanded should not be paid ; and if on the appearance of such person, or in default of appearance after proof of the service of the summons, either personally or at the last know place of abode or of business of such person, no sufficient cause can be shown to the contrary, any Justice may issue his warrant of distress for the seizure and sale of the goods and chattels of such person, for the recovery of the amount which may be proved before such Justice to be due from such person, together with such costs, including the cost of cutting off the gas, if the same shall have been cut off by the undertakers, as to such Justice shall seem just and reasonable.”

By section 18 of the Act of 1847 penalties are imposed for fraudulently using gas and for supplying non-consumers with it.

Sections 19 and 20 relate to the wilful and accidental injury to pipes, posts, or lamps :—

“19. Every person who shall wilfully remove, destroy, or damage any pipe, pillar, post, plug, lamp, or other work of the undertakers for supplying gas, or who shall wilfully extinguish any of the public lamps or lights, or waste or improperly use any of the gas supplied by the undertakers, shall for each such offence forfeit to the undertakers any sum not exceeding five pounds, in addition to the amount of the damage done.

“20. Every person who shall carelessly or accidentally break, throw down, or damage any pipe, pillar, or lamp belonging to the undertakers, or under their control, shall pay such sum of money by way of satisfaction to the undertakers for the damage done, not exceeding five pounds, as any two Justices or the Sheriff shall think reasonable.”

The recovery of a penalty for an offence does not defeat the right to bring an action for damages for injury to property.<sup>1</sup>

### *Public Lamps.*

“Section 24. The undertakers shall supply gas to any public lamps within the distance of fifty yards from any of the mains of the undertakers, in such quantities as the local authority of each district or the trustees of any turnpike road or any highway board within the limits of the special Act may from time to time require to be supplied, and the price to be charged by the undertakers and to be paid to them for all gas so supplied shall be settled by agreement between the local authorities and the undertakers, and in case of difference by arbitration, regard being had to the circumstances of the case and the prices charged to private consumers in the district.”

A company are, if required, to supply gas to any public lamps within 50 yards from their mains, the

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<sup>1</sup> Crystal Palace Co. v. Idris, 1900, 16 T.L.R. 180.



price of gas to be fixed by agreement or by arbitration. They may require consumers to use meters, and may supply them or let them. Where a meter is sold the consumer keeps it in order. The right of owners or occupiers to demand a supply of gas to be furnished to their premises is regulated by section 11 of the Act of 1871.

“The undertakers shall, upon being required so to do by the owner or occupier of any premises situate within twenty-five yards from any main of the undertakers, or such other distance as may be prescribed, give and continue to give a supply of gas for such premises, under such pressure in the main as may be prescribed, and they shall furnish and lay any pipe that may be necessary for such purpose, subject to the conditions following; (that is to say,)

“The cost of so much of any pipe for the supply of gas to any owner or occupier as may be laid upon the property of such owner, or in the possession of such occupier, and of so much of any such pipe as may be laid for a greater distance than thirty feet from any pipe of the undertakers, although not on such property, shall be defrayed by such owner or occupier.

“Every owner or occupier of premises requiring a supply of gas shall—

“Serve a notice upon the undertakers at their office, specifying the premises in respect of which such supply is required, and the day (not being an earlier day than a reasonable time after the date of the service of such notice) upon which such supply is required to commence;

“Enter into a written contract with the undertakers (if required by them so to do) to continue to receive and pay for a supply of gas for a period of at least two years, of such an amount that the rent payable for the same shall not be less than twenty pounds per centum

per annum on the outlay incurred by the undertakers in providing any pipe to be provided by them for the purpose of such supply ; and

“ Give to the undertakers (if required by them so to do) security for the payment to them of all moneys which may become due to them by such owner or occupier in respect of any pipe to be furnished by the undertakers and in respect of gas to be supplied by them.

“ Provided always, that the undertakers may, after they have given a supply of gas for any premises, by notice in writing, require the owner or occupier of such premises, within seven days after the date of the service of such notice, to give to them security for the payment of all moneys which may from time to time become due to them in respect of such supply, in case such owner or occupier has not already given such security, or in case any security given has become invalid, or is insufficient, and in case any such owner or occupier fails to comply with the terms of such notice, the undertakers may, if they please, discontinue to supply gas for such premises so long as such failure continues.

“ Section 12. The quality of the gas supplied by the undertakers shall, with respect to its illuminating power, be such as to produce at the testing place provided in conformity with this Act a light equal in intensity to that produced by the prescribed number of sperm candles of six in the pound, and such gas shall as to its purity not exhibit any trace of sulphuretted hydrogen when tested in accordance with the rules prescribed in that behalf in Part II. of the Schedule A. to this Act annexed.”

Gas companies have to deliver an annual statement of account to the District Council of every district within the limits of the special Act, and also to the Clerk of the Peace of the county in which the gasworks are situated (G.W. Cl. Act, 1871, section 35 ; G.W. Cl. Act, 1847, section 38).

The Gas Acts do not impose an obligation on a company to insure the lighting of a district where they contract with the Council for that purpose. Section 36 of the Act of 1871 imposes on a company liability to a penalty of 40s. on a company for each default to supply gas according to the provisions of the Act, or for neglect or refusal so to supply it. This liability is incurred where a company improperly cut off a supply (G.W. Cl. Act, 1871, section 35 ; G.W. Cl. Act, 1847, section 38), or in other ways wilfully neglect or refuse a supply which is under their control, but not where a deficiency is caused by a frost so severe that the gas-pipes are blocked with ice.<sup>1</sup> Under a contract to light public lamps, failure to do so does not disentitle the company to the price agreed to for lighting each lamp, but the Council can recover damages for breach of contract. The obligation to supply must be enforced by the statutory remedy ; the mode of payment by the contract.<sup>2</sup> A company performing the obligations imposed on them by the Gas Acts cannot justify creating a nuisance by alleging inability to make or supply gas without so doing.<sup>3</sup> The erection of gasworks near a residence cannot be stopped by injunction, it being uncertain whether the works will prove a nuisance when they are completed ;<sup>4</sup> but where by reason of noxious

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<sup>1</sup> *In re Richmond Gas Co.*, 1894, 1 Q.B. 56.

<sup>2</sup> *Olegg v. Earby Gas Co.*, 1896, 12 T.L.R. 241.

<sup>3</sup> *A.G. v. Gas L. and Coke Co.*, 1877, 7 Ch.D. 217.

<sup>4</sup> *Haines v. Taylor*, 1847, 2 Ph. 209.

discharges of gas, health or property is injured, a perpetual injunction will be granted.<sup>1</sup>

*Main Roads—Rural Parishes—Gas Companies—  
Gas Mains—Electric Lighting Acts.*

The duty of Surveyors of Highways does not extend to lighting. The duty to maintain and repair is fulfilled by reparation of the surface of the road, and by keeping the highway free from obstruction and encroachment.<sup>2</sup> The term "road" applies to that part of a highway which is hardened for traffic, "highway" includes the whole space dedicated to public use, County Councils are empowered to light main roads, but they are not bound to do so. Rural District Councils can obtain urban powers pursuant to section 276, Public Health Act, 1875, and in rural parishes the Parish Council or Parish Meeting can adopt the Lighting and Watching Act, 1833. Both Urban and Rural District Councils can obtain a license or provisional order of the Board of Trade for the supply of electricity for public and private purposes under the Electric Lighting Acts, 1882–1888. The Gas Meter Acts, 22 & 23 Viet. c. 66, and 23 & 24 Viet. c. 146, are enforced by the County Council (section 3(13) L.G. Act, 1888). By those Acts models

<sup>1</sup> *Imp. Gas Co. v. Broadbent*, 1859, 7 H.L. Cases 600.

<sup>2</sup> *Lanark v. Kelvinside*, 14 Q. of Sess. O., 4th ser., H. of L. 18.

of gas holders with their cubic foot measurement, are to be deposited with the County Council who are to appoint inspectors. The verification of meter standard tests are regulated by the Weights and Measures Acts, 1878-1889 (section 15, W. & M. Act, 1889.)

The statutory monopoly of gas companies cannot be invaded by District Councils, but Councils, like individuals, may make gas for use about their own offices and works. Where an Urban District is not within the limits of supply of a gas company, section 161 empowers them to supply gas for public or private purposes, and to obtain a Provisional Order pursuant to the Gas and Waterworks Facilities Act, 1870, putting them on the footing of a gas company. They can supply gas for public purposes without acquiring powers conferred by the Gasworks Clauses Acts, but they cannot recover gas rates without a Provisional Order.

"161. Any Urban Authority may contract with any person for the supply of gas, or other means of lighting the streets, markets, and public buildings in their district, and may provide such lamps, lamp posts, and other materials and apparatus as they may think necessary for lighting the same.

"Where there is not any company or person (other than the Urban Authority) authorised by or in pursuance of any Act of Parliament, or any order confirmed by Parliament, to supply gas for public and private purposes, supplying gas within any part of the district of such authority, such authority may themselves undertake to supply gas for such purposes or any of them throughout the whole or any part of their district; and if there is any such company or person so supplying gas,

but the limits of supply of such company or person include part only of the district, then the Urban Authority may themselves undertake to supply gas throughout any part of the district not included within such limits of supply.

“Where an Urban Authority may under this Act themselves undertake to supply gas for the whole or any part of their district, a Provisional Order authorising a gas undertaking may be obtained by such authority under and subject to the provisions of the Gas and Waterworks Facilities Act, 1870, and any Act amending the same; and in the construction of the said Act the term “the undertakers” shall be deemed to include any such Urban Authority: Provided that for the purposes of this Act the Local Government Board shall throughout the said Act be deemed to be substituted for the Board of Trade.”

And by section 11, subsection 11, Local Government Act, 1888, it is provided that—

“(11.) Every authority having any power or duty to light the roads in their district shall have the same power and duty to light any main roads in their district.”

### *Gas Mains.*

The right to break up streets to lay gas mains cannot be conferred by a District Council on a company which is not authorised by statute to supply gas.<sup>1</sup>

If a gas company with Parliamentary powers disturb the surface of street and lay pipes thereunder, except according to notice given to, and plan duly approved by, the Council, they incur a penalty of five pounds for every such offence, and five pounds for

<sup>1</sup> Reg. v. Longton Gas Co., 1860, 2 E. and E. 651; Salt Union v. Harvey, 1897, 61 J. P. 375.

each day during which they delay to reinstate the streets (sections 10 and 11 G.W. Cl. Act, 1847). These penalties should be enforced, or the District Council will fail to obtain the assistance of the High Court to enforce the removal of the gas pipes so laid under a street. If the trenches made in a street are not effectually filled up, so that an accident to passengers is caused, the gas company are responsible,<sup>1</sup> and where they have lawfully and sufficiently laid their mains under a road, they can recover damages from a District Council who use steam rollers so as to crush the gas mains.<sup>2</sup> Companies, although they perform the obligations imposed on them by statute cannot excuse causing a nuisance by alleging inability to make or supply gas without so doing;<sup>3</sup> but the High Court will not interfere conjecturally to restrain the chance of a nuisance. Imminence of danger will support an action for an injunction.<sup>4</sup>

### *The Electric Lighting Acts, 1882-1888.*

There are three ways of obtaining the right to exercise the powers conferred by the Electric Lighting Acts, 1882-1888, relating to the supply of electricity for public and private purposes by special Act, by licence, and by a Provisional Order of the Board of Trade. Persons other than a District Council cannot obtain a licence or a Provisional Order without their

<sup>1</sup> *Goodson v. Sunbury Gas Co.*, 1896, 75 L.T. 251.

<sup>2</sup> *Gas Light and Coke Co. v. St. Mary Abbott's Vestry*, 1885, 15 Q.B.D. 1.

<sup>3</sup> *A.G. v. Gas Light and Coke Co.*, 1877, 7 Ch.D. 217.

<sup>4</sup> *Haines v. Taylor*, 1847, 2 Ph. 209.



consent,<sup>1</sup> but the Board of Trade have power to dispense with the consent of the District Council under special circumstances, and in this case they have to make a report to Parliament stating the grounds on which they have dispensed with the consent. A licence is for seven years, and is renewable. During recent years the Board of Trade have granted but very few licences, and the procedure is now invariably by Provisional Order. A Provisional Order may be for any period. Section 2 of the Act of 1888 empowers a District Council to purchase electricity works in the hands of a company at the expiration of 42 years from the grant of the Order. The undertaking is purchased at a fair market value, without any addition in respect of compulsory purchase or of goodwill, or of any profit which may be made from it.

Byelaws for securing the public safety may be made by the Board of Trade, and by a District Council subject to the confirmation of the Board.

Neither a licence nor an Order create a monopoly in favour of the grantee. In Urban Districts, Councils defray their expenses under the Act as general expenses of the district. In Rural Districts the expenses are special.

The Electric Lighting Clauses Act, 1899, section 7, which is incorporated in all Provisional Orders, provides that the net annual surplus and the annual proceeds of the reserve fund, when amounting

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<sup>1</sup> E. L. Act, 1888, section 1.

to the prescribed limit, shall be carried to the credit of the local rates, or, at the option of the Council, shall be applied to the improvement of the district and public benefit of the inhabitants, or in reduction of the capital moneys borrowed for electricity purposes. Provided that if the annual surplus exceeds five per cent. on the capital expenditure on the undertaking, the Council shall make such a rateable reduction in the charge for the supply of electricity as shall reduce the surplus to that rate of profit.

Any deficiency of income is charged on and payable out of the local rate.

Section 4 of the Act of 1888 places private electric lines under the control of the Board of Trade and Postmaster-General, who may issue regulations for the protection of the public and electric lines of the Postmaster-General, and where such electric lines affect the telegraphic communication through any wires of the Postmaster General he may notify the owners to remove such lines.

Electric lines used for the supply of parts of premises in one occupancy are not subject to the supervision of the authorities. Undertakers have the powers conferred by the Gasworks Clauses Act, 1847, in respect of the breaking up of streets repairable by the Council ; but electric lines are not to be carried above ground, along, over, or across any street without the express consent of the Council

(section 14, E.L. Act, 1882). Private streets, railways, and tramways are not to be opened without consent of owners and those who are liable to repair, unless in pursuance of powers in the licence or Provisional Order. The Undertakers have the usual powers for recovery of charges and obligations to afford a supply of electricity to consumers, but they cannot prescribe a special form of lamp or burner.

Local authorities who light their districts are empowered to erect lamp-posts in public places and to compel the frontagers in streets, not repairable by the public, to provide lamp-posts for lighting such streets. It is important to choose a suitable position for the lamp posts. Usually they are placed just within the kerbing of the pavement, so that neither the base of the post or the top of it do not project over the carriageway. Such a position enables traffic to pass without colliding with the posts; but accidents happen. The Provisional Order authorising an undertaking incorporates the Gasworks Clauses Act, 1847, by section 20 of which every person who shall carelessly or accidentally break, throw down, or damage any pipe, pillar, or lamp belonging to the Council shall pay for damage done such sum not exceeding 5*l.* as any two Justices think reasonable. This does not enable the Council to recover before the Justices compensation from a master where his servant accidentally<sup>1</sup> damages a lamp-post. The section gives a remedy against the person who

<sup>1</sup> *Harding v. Barker*, 1889, 53 J.P. 338.

actually does the act; but the Council as owners might recover from a master, in the County Court, compensation where the damage was occasioned by the negligence of the servant, on the principle enunciated in *General Omnibus Company v. Limps*.<sup>1</sup> Owners of carriages occasionally claim damages from the Council in respect to injury to vehicles caused by colliding with lamp-posts placed in an unsuitable position; to succeed they have to establish that the post was not reasonably placed with regard to traffic and locality. The Council are not bound to light their district, but if they do the lighting of the lamps should be regulated with due care.

The duty imposed by the Public Health Act is to light the town reasonably and sufficiently. Thus in *Lumley v. Mayor of East Retford*<sup>2</sup> where the Corporation were owners of the gas works and had undertaken to light the town, they were held responsible for the consequences of an injury caused to a foot-passenger, occasioned by contact with a post erected in the centre of the entrance to a public footpath. Near the post, the Town Council had placed a gas lamp, but it was not lighted on the night when the accident occurred; and the jury found that the town had not been sufficiently lighted. Where neglect of duty is involved each case must depend on its own circumstances. In *Mellor v. Mayor of Heywood*<sup>3</sup> the Council had placed a lamp post 16 inches from the edge of the pavement, at a corner

<sup>1</sup> 1862, 1 H. & C. 526.

<sup>2</sup> 1891, 55 J.P. 133.

<sup>3</sup> 1884, 48 J.P. 148.

where there was a sharp descent in the road. The lamp was not lit on the night when a carriage collided with the lamp-post, yet it was held that there being no duty to light there was no cause of action. This is in conflict with the Retford case. In a recent case against the Vestry of Islington,<sup>1</sup> where the lamps on a street refuge were extinguished according to regulations at 12.30, it was held that no liability attached for injuries occasioned to a carriage which collided with the posts on the refuge, and which would have been avoided had the lamp been lit.

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<sup>1</sup> 1896, 60 J.P. 821.



## CHAPTER 7.

## BYELAWS.

*Generally, New Streets—The Building Estate—Private Roads—Block Buildings—Section 157, Public Health Act, 1875—Exemptions—Crown Property—Property of Companies—Extension of Section 157 by Section 23, Public Health Act, 1890—Byelaws in Rural Districts—New Buildings—The Approval of Plans.*

A byelaw is not unreasonable which does not extend beyond the requirements of the case to which it relates. In each case the validity of the byelaw depends on the statute under which it is made, *e.g.*, where byelaws are made to regulate the use of public pleasure grounds, the sale of goods therein may be prohibited. It is reasonable to protect the public from the importunities of itinerant traders.<sup>1</sup> Where the sea-shore is vested in the Council by lease or grant from the Crown, although it is subject to public rights of passage and navigation,<sup>2</sup> the Council can protect their legal rights from invasion by public

<sup>1</sup> *Gray v. Silvester*, 1897, 46 W.R. 63.

<sup>2</sup> *A.G. v. Burridge*, 1822, 10 Price 350, *ib.*, 378.

preaching and assemblies. Byelaws to regulate the use of the sea-shore are made under local Acts, or by authority of the Board of Trade (29 & 30 Vict. c. 62. Crown Lands Act, 1866). Although the High Court will be aiding to Local Authorities where their rights are substantially invaded, an injunction is refused where the matter is trivial. Holding a religious service was deemed a trivial matter in *Llandudno D.C. v. Woods*.<sup>1</sup>

Property invested in the Admiralty and the Secretary of State for War are expressly exempted from the operation of the Public Health Acts, and navigation rights of Commissioners and companies authorised by Act of Parliament are protected from interference which may affect the navigation or interrupt the traffic on any towing path (section 327). Canal bridges enjoy a like exemption.

The Council may carry their sewers under a canal without interfering with any works belonging to it or with any land necessary for the enjoyment or improvement thereof, hence a notice pursuant to section 16, Public Health Act, is enough to warrant the laying of such a sewer, but where works are contemplated which may interfere with navigation or incidental rights the Council must notify the Company of the nature of the intended works, specifying particulars thereof, and if the company do not consent to the erection of the proposed, the

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<sup>1</sup> 1899, 2 Ch. 705.



matter in difference must be referred to arbitration, the result of which is final in respect of right to execute the works and of the amount of any compensation to be paid (sections 328, 329).

The approval of a Secretary of State is required for buildings erected under the Lunacy Acts, Prisons Act, Improvement of Lands Acts, County Police Act, 1840, and Education Acts. Property of Canal and Railway Companies are expressly exempted by section 157 and section 327, Public Health Act, 1875. The Board of Agriculture now act in place of the Land Commissioners, and Board of Education act in place of the Education Department. Schedule 7 of the Code require plans of all school buildings to be submitted to the Board.

County police stations are vested in the Joint Committee pursuant to section 30, Local Government Act, 1888, who control the buildings so they are exempt from the requirements of the byelaws of District Councils,<sup>1</sup> but not from the operation of the general law in regard to nuisance.

The owners of land acquired under statutory powers by a school board are not subject to byelaws of Local Authorities nor to Acts passed before the land is acquired by Provisional Order, such Act being inconsistent with the Act by which the Provisional Order is confirmed.<sup>2</sup> This rule enables railway

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<sup>1</sup> See *ex parte* O.O. of Somerset, 1889, 61 L.T. 512.

<sup>2</sup> L.C.C. v. School B. of L., 1892, 2 Q.B. 606.

companies to build their stations uncontrolled by building line.<sup>1</sup> This rule applies whether the land is acquired compulsorily or by agreement.

When new byelaws are made, the repealing clause has usually a saving for all rights accrued under the byelaws repealed. This does not leave open to any one who could have taken advantage of the repealed byelaws still to do so. Mere rights are not saved unless some act has been done by the person who seeks to avail himself of the rights.<sup>2</sup> But new byelaws cannot have a retro-operative force.<sup>3</sup>

The laying out of new streets and the construction of their surface and their sewerage is regulated by the byelaws in force in the district; but the direction straight or curved, of new streets is not brought under the control of the Council. A new street is laid out by erecting a fence or other boundary, or by laying down kerbing or levelling the surface of the ground so as to define the direction of a street, where such acts are done for the purpose of forming or laying out a street (compare section 8, London Building Act, 1894). The dedication of a street to public use operates forthwith after forming and laying out land as a street to be used as a part of the street system of a district. A street is not necessarily a thoroughfare; where a street is once thrown open to public use it cannot be closed.

<sup>1</sup> City and S.L. Ry. v. L.C.C., 1891, 2 Q.B. 513.

<sup>2</sup> See Abbot v. Minister of Lands, 1895, A.O. 425.

<sup>3</sup> Withington U.D.C. v. Moore, 1896, 60 J.P. 408.

Lapse of time is not necessary to prove dedication, as in the case of a grant which is presumed from length of time during which a right has been exercised without contest.<sup>1</sup>

### *New Streets.*

Byelaws relating to the laying out and construction of new streets apply to all new streets. Owners of building estates may desire to preserve the privacy of an urban park by building lodges at the entrance and placing gates across the road. That they cannot do.<sup>2</sup> The byelaw relating to the entrance of new streets (No. 8 in Model Series) requires that the entrance shall be of a width equal to the width of the street and open from the ground upwards.

Dedication results from compliance with that byelaw, but the question of dedication to the public is not involved in the application of street byelaws relating to reparation. A private way may be a street.<sup>3</sup> Land companies have frequently laid out roads, erected gates, and made charges for passage of vehicles. Byelaws may be enforced against the frontagers. To be distinguished from roads in parks are the enclosed approaches to block dwellings for artisans and private courts. When the approaches are solely used to afford access to the dwellings, they

<sup>1</sup> *Rugby Charity v. Merryweather*, 1809, 11,376; *Woodyer v. Hadden*, 1813, 5 Taunt. 137.

<sup>2</sup> *Daw v. L.C.C.*, 1890, 62 L.T. 937.

<sup>3</sup> *St. Mary Islington v. Barrett*, 1874, L.R. 9, Q.B. 278; *M. Ry. Co. v. Watton*, 1886, 17 Q.B.D. 30.

are not laid out as streets.<sup>1</sup> In the application of byelaws to particular cases, the scope of the Public Health Acts should be borne in mind. Those Acts involve extensive interference with proprietary rights; owners cannot do what they like with their property. If they cannot conform to the byelaws they cannot lay out streets. A way is a street, although the traffic for which it is intended is private traffic to and from the houses to be built along or around it: therefore "the Grove" and "Gardens" are streets subjects to the byelaws. In *Wood v. L.C.C.*,<sup>2</sup> an owner built about 40 flats above shops around a court, and erected iron gates across the only exit to a street. The High Court held that dealing with land by laying it out as a courtyard did not bring it within the new street byelaws. That decision has been overruled by the Court of Appeal in *Armstrong v. L.C.C.*,<sup>3</sup> by Lord Russell of Killowen's judgment, where the owner proposed to form a grove about 600 feet long and erect gates at the point where it opened into a street. Bridges, except county bridges, form part of the street in which they are constructed.

District Councils who exercise urban powers, control the laying out, construction, and sewerage of new streets, and the structure, ventilation, and sanitation of new buildings pursuant to byelaws

<sup>1</sup> *L.C.C. v. Davies*, 1895, 13 W.R. 571.

<sup>2</sup> 1895, 64 L.J., M.C. 276.

<sup>3</sup> 1900, 1 Q.B. 423.

made and enforced under sections 157 and 158, Public Health Acts.

"157. Every Urban Authority may make byelaws with respect to the following matters (that is to say,)

- "(1.) With respect to the level width and construction of new streets, and the provisions for the sewerage thereof :
- "(2.) With respect to the structure of walls, foundations, roofs, and chimneys of new buildings for securing stability and the prevention of fires, and for purposes of health :
- "(3.) With respect to the sufficiency of the space about buildings to secure a free circulation of air, and with respect to the ventilation of buildings :
- "(4.) With respect to the drainage of buildings, to water-closets, earth-closets, privies, ashpits, and cesspools in connection with buildings and to the closing of buildings or parts of buildings unfit for human habitation, and to prohibition of their use for such habitation :

And they may further provide for the observance of such byelaws by enacting therein such provisions as they think necessary as to the giving of notices, as to the deposit of plans and sections by persons intending to lay out streets or to construct buildings, as to inspection by the Urban Authority, and as to the power of such authority (subject to the provisions of this Act)<sup>1</sup> to remove, alter, or pull down any work begun or done in contravention of such byelaws. Provided that no byelaw made under this section shall affect any building erected in any place (which at the time of the passing of this Act is included in an Urban Sanitary District) before the Local Government Acts came into force in such place, or any building erected in any place (which at the time of the passing of this Act is not included in an Urban Sanitary

<sup>1</sup> *i.e.*, not contrary to the provisions of the Act. *Shaw v. Solihull*, "The Times," 4th July, 1890.

District) before such place becomes constituted or included in an Urban District, or by virtue of any order of the Local Government Board subject to this enactment.

“The provisions of this section and of the two last preceding sections shall not apply to buildings belonging to any railway company and used for the purposes of such railway under any Act of Parliament.”

Buildings erected before the constitution of a District Council are not affected by byelaws made pursuant to section 157. This limitation is removed so far as byelaws relate to the sanitation of dwelling-houses in districts, urban and rural, where Part 3 of the Public Health Act, 1890, is adopted.

Crown property is exempt from the operation of byelaws. The model series of byelaws relating to buildings exempt “such as are in Her Majesty’s possession or employed or intended to be employed for Her Majesty’s use or service.” The Crown exemption flows from an existing interest; an agreement with a builder to make a lease to Government department if their officers consider the premises fit for occupancy is not enough.<sup>1</sup> Buildings of State authorities and such as are used in connection with navigation or with mines; and goals, prisons, and lunatic asylums are exempt; and some buildings of specified dimensions which are not intended for human habitation. The Crown exemption only applies where property is held by those in the service of the Crown and who hold in the royal

<sup>1</sup> *Drury v. Rickard*, 1899, 15 T.L.R. 188.

right. Property may be used for Crown service but acquired and held for national purposes, *e.g.*, the premises held by a Volunteer Corps which are provided by means of public donations and vested in the Commanding Officer. The headquarters belong to the corps in the national right and are used in the royal right, hence the erection and sanitation of the buildings is subject to byelaws of the local authority,<sup>1</sup> and their occupancy does not subject the corps to the payment of local rates.<sup>2</sup>

The exemption of the buildings of railway companies from the operation of byelaws does not extend to other companies whose undertakings are authorised by Act. Commercial companies are apt to think that their buildings are exempt from the operation of byelaws, just as if the company were a department of the State. The high-pressure water towers of a waterworks company and the ventilating shafts of a gas company are buildings; the difficulty is in the application of the structural requirements of byelaws to them. Section 93 of the Waterworks Clauses Act, 1847, enacts that, "Nothing herein or in the Special Water Act contained shall be deemed to exempt the undertakers from any general Act relating to waterworks or any Act for improving the sanitary condition of towns and populous districts passed in any future Session of Parliament." Section 49 of the Gasworks Clauses Act, 1897, is to the like effect.

<sup>1</sup> Westminster V. r. Hopkins, 1899, 2 Q.B. 474.

<sup>2</sup> Pearson v. Holborn Union, 1893, 1 Q.B. 389.



Companies authorised by statute are in the same position as a private person intending to build a house upon his own land and under a similar obligation to comply with byelaws duly made under the Public Health Acts.<sup>1</sup>

The application of the general law to works done under private Acts does not invade the rule which prevails where inconsistent provisions of Acts are interpreted. Acts are read so as to stand together if it is so possible to give effect to them; but absolute incompatibility of one Act repeals an earlier Act; thus the Building in Streets Act, 1888, which says an owner shall not build beyond a certain line without consent of the Council, does not apply where a later private Act authorises a company to build on a site which extends beyond that line. The provisions of the two Acts are necessarily inconsistent, hence the later operates as a repeal of the earlier.<sup>2</sup>

Rural District Councils do not make byelaws under section 157, unless they are so authorised to do by Order of the Local Government Board; but when they have adopted Part 3 of the Public Health Acts Amendment Act, 1890, they are placed in the position of Urban Councils with respect to the making of byelaws relating to the structure of walls and foundations of new buildings for purposes of health and with respect to the matters enumerated

<sup>1</sup> Uckwell R.D.C. v. Crowborough, 1899, 2 Q.B. 664.

<sup>2</sup> City and S.L. Ry. v. L.C.C., 1891, 2 Q.B. 517.

in subsections 3 and 4 of section 157 as amended and extended by section 23 of the Public Health Acts Amendment Act, 1890, which is as follows :—

“23.—(1.) Section 157 of the Public Health Act, 1875, shall be extended so as to empower every Urban Authority to make byelaws with respect to the following matters, that is to say :—

“The keeping waterclosets supplied with sufficient water for flushing ;

“The structure of floors, hearths, and staircases, and the height of rooms intended to be used for human habitation ;

“The paving of yards and open spaces in connection with dwelling-houses ; and

“The provision in connection with the laying out of new streets of secondary means of access where necessary for the purpose of the removal of house refuse and other matters.

“(2.) Any byelaws under that section as above extended with regard to the drainage of buildings, and to waterclosets, earth-closets, privies, ashpits, and cesspools in connection with buildings, and the keeping waterclosets supplied with sufficient water for flushing, may be made so as to affect buildings erected before the times mentioned in the said section.

“(3.) The provisions of the said section (as amended by this Act), so far as they relate to byelaws with respect to the structure of walls and foundations of new buildings for purposes of health and with respect to the matters mentioned in subsections (3) and (4) of the said section, and with respect to the structure of floors, the height of rooms to be used for human habitation, and to the keeping of waterclosets supplied with sufficient water for flushing, shall be extended so as to empower rural authorities to make byelaws in respect to the said matters, and to provide for the observance of such byelaws, and to enforce the same as if such powers were conferred on the rural authorities by virtue of an order of the Local Government Board made on the day when this part of this Act

is adopted ; and section 158 of the Public Health Act, 1875, shall also apply to any such authority, and shall be in force in every rural district where this part of this Act is adopted.

“(4.) Every Local Authority may make byelaws to prevent buildings which have been erected in accordance with byelaws made under the Public Health Acts from being altered in such a way that if at first so constructed they would have contravened the byelaws.”

When the Council intend to control the drainage of old buildings the intention should be clearly stated and such additional byelaws made as are to be applied to them, with definite and reasonable requirements.

### *New Buildings.*

An interpretation of new building is not given in the Public Health Acts, each case is judged on its own facts. Whether an erection amounts to a new building within the byelaws is a question of fact to be determined by a court of summary jurisdiction. Justices can, instead of deciding on the facts, state the facts in a special case, with their reasons for deciding<sup>1</sup> that a structure is a new building within the byelaws, for the purpose of obtaining the opinion of the High Court ; but if they find as a fact that the erection in question is a new building their decision can only be reviewed by appealing to Quarter Sessions.

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<sup>1</sup> *James v. Wyvill*, 1884, 51 L.T. 237.

Section 159, Public Health Act, 1875, is as follows :—

“For the purposes of this Act the re erecting of any building pulled down to or below the ground floor, or of any frame building of which only the framework is let down to the ground floor, or the conversion into a dwelling-house of any building not originally constructed for human habitation, or the conversion into more than one dwelling-house of a building originally constructed as one dwelling-house only, shall be considered the erection of a new building.”

Alterations of existing building and slight additions are not within the control of byelaws unless they are so extensive as to bring the work (independently of section 159) within their scope. If the bulk of alterations and additions exceed the bulk of the existing premises, those who control their construction must conform to the requirements of the byelaws. To re-construct premises with old materials is to erect a new building.<sup>1</sup> Structural requirements are not restricted to the original construction of buildings, nor to construction of a building as a whole, but deposit of plans refers to the first erection.<sup>2</sup>

Temporary erections, such as workmen's tool-houses and shelters for use during building operations, are not within byelaws, nor are hoardings used for advertising,<sup>3</sup> nor wooden shelters for a weighing machine, nor such as are used for sale of refreshments in open spaces,<sup>4</sup> nor a permanent timber stage<sup>5</sup> ; nor

<sup>1</sup> *Hobbs v. Dance*, 1873, L.R. 9, C.P. 30.

<sup>2</sup> *James v. Masters*, 1893, 1 Q.B. 395.

<sup>3</sup> *Slaughter v. Sunderland*, 1891, 65 L.T. 250.

<sup>4</sup> *M. of Southend v. Archer*, 1901, 17 T.L.R. 215.

<sup>5</sup> *Harris v. De Pinner*, 1856, 33 Ch.D. 238.

work which is accessory to structures to which byelaws do not relate : *e.g.*, the casings of machinery and boilers.<sup>1</sup> The use to which structures are to be put is the test for applying the byelaws. If a movable wooden erection is intended to be used in like manner as a fixed and permanent structure it must be constructed in conformity to the byelaws, or it cannot be used for domestic purposes.<sup>2</sup> A building is erected when fixed for use, not when being carried from place to place.<sup>3</sup>

### *The Approval of Plans.*

To provide for the observance of byelaws relating to streets and buildings a District Council may require such notifications to be given, and such plans and sections of intended works to be deposited as they think necessary. The deposit of plans and approval by the Council do not entail any obligation on the depositor to lay out the proposed street or erect the houses described therein. He can abandon his intention. Plans exhibiting a scheme for the development of a building estate are submitted for approval in order to attract purchasers, but the approval of the Council, which cannot control the scheme, should be limited to such works as are actually in contemplation. The approval of a scheme misleads the public because the Council

<sup>1</sup> *Gery v. Black Iron Brewery*, 1891, 55 J.P. 711.

<sup>2</sup> *Richardson v. Brown*, 1885, 49 J.P. 661.

<sup>3</sup> *Smith v. Stokes*, 1863, 4 B. & S. 84, and compare *Holdinot v. Newton*, 1901, 49 W.R. 381.

cannot interfere to enforce it as originally proposed and approved either on behalf of the public or as between the vendors and purchaser of lots. To enable purchasers to compel vendors to adhere to plans of a building scheme, they must resort to the covenant to observe the conditions of sale which invited them to bid and purchase on the footing that the whole of an estate was offered for sale subject to general scheme indicated on the plans as affecting the class of building and directions and dimensions of the streets.<sup>1</sup> In this way plans can be incorporated with an agreement.

“158. Where a notice, plan, or description of any work is required by any byelaw made by an urban authority to be laid before that authority, the urban authority shall within one month after the same has been delivered or sent to their surveyor or clerk, signify in writing their approval or disapproval of the intended work to the person proposing to execute the same : and if the work is commenced after such notice of disapproval, or before the expiration of such month without such approval, and is in any respect not in conformity with any byelaw of the urban authority, the urban authority may cause so much of the work as has been executed to be pulled down or removed.

“Where an urban authority incur expenses in or about the removal of any work executed contrary to any byelaw, such authority may recover in a summary manner the amount of such expenses either from the person executing the works removed or from the person causing the works to be executed, at their discretion.

“Where an urban authority may, under this section, pull down or remove any work begun or executed in contravention of any byelaw, or where the beginning or the execution of

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<sup>1</sup> *In re Birmingham Land Co.*, 1893, 1 Ch. 342.

the work is an offence in respect whereof the offender is liable in respect of any byelaw to a penalty, the existence of the work during its continuance in such a form and state as to be in contravention of any byelaw shall be deemed to be a continuing offence, but a penalty shall not be incurred in respect thereof after the expiration of one year from the day when the offence was committed or the byelaw was broken."

But a plan of a street or building as deposited and approved must be adhered to both in respect of structure and position. To deviate therefrom in the execution of the work places the depositor in the position of one who has neglected to deposit plans. The duty imposed on the Council is to approve or disapprove, and to examine the plans and see whether

- (1) the byelaws are complied with,
- (2) or if they contravene the general law.

The Council cannot disapprove of works because they are of a class or of dimensions unsuitable to a locality and will tend to depreciate property in the neighbourhood.<sup>1</sup> But when plans are before the Council they must be considered with reference to the general laws. If the Council have no byelaws or if proposed works are outside the provisions of the byelaws, and an Act forbids or requires something to be done, the Council must consider such facts in the discharge of their statutory duty to approve or disapprove.<sup>2</sup> If the Council honestly exercise their

<sup>1</sup> *R. v. Newcastle*, 1889, 60 L.T. 963.

<sup>2</sup> *Cook v. Hansworth*, 1896, 2 Q.B. p. 92; *R. v. M. of Eastbourne*, 1900, 83 L.T. 238.



powers no appeal lies from their decision. They determine the fact that a place will be a new street. If the High Court were to compel the Council to execute the view of the Court it would be to take away what the Legislature has left to the Council's discretion.<sup>1</sup> If the disapproval of the Council is not made within a month no penalty can be enforced, demolition will then be the only way to remedy a structural infringement of the byelaws.<sup>2</sup>

The power to enforce byelaws cannot be exercised until some act in furtherance of execution of the works indicated in plans is commenced.<sup>3</sup> If plans are passed by a committee subject to some condition there is no approval, but the fact should not be left in doubt. Where the passing of plans is subject to approval of some alteration, the condition is likely to be treated as supplementary to a binding act of the Council and not as a condition precedent.<sup>4</sup>

The provisions of the byelaws must be enforced by the Council; they have no dispensing power.<sup>5</sup> If plans are lawfully approved the Council cannot withdraw their approval;<sup>6</sup> but an approval in fact is no protection to a builder if the proposed erection transgresses the byelaws,<sup>7</sup> and a disapproval is only valid where the plans show some infringement of the byelaws. The Council cannot refuse their approval

<sup>1</sup> *Smith v. Chorley*, 1897, 1 Q.B. 678.

<sup>2</sup> *Clark v. Bloomfield*, 1885, 1 T.L.R. 373.

<sup>3</sup> *Mackell v. Commissioners of Herne Bay*, 1878, 37 L.T. 812.

<sup>4</sup> *North v. Percival*, 1898, 2 Ch. 130.

<sup>5</sup> *McIntosh v. Pontypridd*, 1898, 6 L.J.Q.B. 64.

<sup>6</sup> *Slee v. C. of Bradford*, 1863, 8 L.T. 491.

<sup>7</sup> *Jabbloom v. King*, 1899, 1 Q.B. 441.

of plans because they have not themselves executed works which the Public Health Act make their duty to do, *e.g.*,<sup>1</sup> plans of street sewers cannot be rejected because the Council have not constructed outfall sewerage works to carry the sewage away. Byelaws control the Council and ratepayers alike. An invalid approval is a nullity. That only is done which can legally be done, otherwise a blunder could not be corrected. There is no hardship in this, because the byelaws are printed, and every ratepayer is entitled to have a copy free of charge. If buildings are erected without a necessary approval in an unauthorised manner or position, the Council cannot afterwards be compelled to give their approval,<sup>2</sup> but where an approval is duly given the High Court will interfere on behalf of a suitor to forbid an undue withdrawal.<sup>3</sup>

*Demolition—The Certificate before Occupancy—Penalties—The Continuing Offence—Contractors—Building Line.*

### *Demolition.*

The Public Health Acts do not limit the time during which the powers of the District Council to compel conformity to byelaws by demolition and removal may be exercised. If breaches of the byelaws are concealed, the Council cannot act, but if

<sup>1</sup> *Q. v. Tynemouth R.D.C.* 1896, 2 Q.B. 451.

<sup>2</sup> *R. v. L.C.C.*, 1897, 76 L.T. 472.

<sup>3</sup> *Premier Land Company v. East Ham*, "Times," 20th November 1897.

knowing of a breach of the byelaws they stand by and delay enforcing the extreme remedy for a long time the High Court will deem their proceedings oppressive, and restrain them by injunction, but this remedy need not, like a penalty or forfeiture, be enforced within the six months' limit imposed by the Summary Jurisdiction Acts.<sup>1</sup>

It should be noticed that the non-conformity with the byelaws in respect of which the power to demolish may be exercised is restricted to breaches of byelaws relating to construction. Omission to notify the Council as required must be corrected by recovery of a penalty. Section 157, Public Health Act enables the Council to regulate the exercise of this power, subject to the provisions of the Act, *i.e.*, not contrary to its provisions. The practice is to notify the person in default to appear at a place and time specified to show cause why his works should not be demolished and removed by the Council. Provided that an opportunity is given to a person to question the propriety of the exercise of their powers by the Council, the notice may be either of intention to pass a resolution to order demolition or of an order to that effect already made. The High Court will interfere if it can be seen that injustice will be done,<sup>2</sup> but where the structural requirements of byelaws are infringed and there has not been unreasonable delay the Council's action cannot be

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<sup>1</sup> See *Bernouldsey v. Johnson*, 1873, L.R., 8 C.P. 411.

<sup>2</sup> *Hopkins v. Smethwick L.B.*, 1890, 24 Q.B.D. 712; compare *A.G. v. Hooper*, 1893, 3 Ch. 483.

stopped ; and where circumstances warrant demolition the officers of the Council can demolish in the mode deemed most convenient, although in the removal of the part of structural works which contravene the byelaws, whole buildings are destroyed.<sup>1</sup>


The power to demolish cannot be exercised to enforce byelaws made pursuant to section 23 (4), Public Heath Acts Amendment Act, 1890, to prevent buildings which have been erected in accordance with byelaws from being altered in such a way that if at first so constructed they would have contravened the byelaws (*see* Met. Man. A. Byelaws Act, 1899, which provides for the deposit of plans of reconstruction and alterations of drains).

The model series of byelaws does not include a clause prohibiting the occupancy of houses before the officer of the Council has given a certificate after inspection and examination that the buildings and their drainage are duly made and completed. Such a byelaw is useful and valid<sup>2</sup> ; but where dwelling-houses are once completed according to the approved plans, occupancy will not be illegal because of some subsequent alteration.<sup>3</sup>

The original plan deposited with the Council remains the plan of a new building described, until, by approval of the Council, others are substituted,

<sup>1</sup> *Jagger v. Doncaster R.D.C.*, 1890, 54 J.P. 438.

<sup>2</sup> *Horsell v. Swindon L.B.*, 1888, 52 J.P. 597.

<sup>3</sup> *Southend v. Ramuz*, 1896, "The Times," 6th August. 

*e.g.*, where revised plans of structural works are approved for conversion of buildings for use as a dwelling-house pursuant to section 23 Public Health Acts Amendment Act, 1890.<sup>1</sup>

### *Penalties.*

District Councils are authorised to impose penalties on those who offend against their byelaws. Such penalties are recoverable by order of a Court of Summary Jurisdiction constituted of two or more Justices of the Peace sitting in Petty Sessions, or by order of a Stipendiary Magistrate (section 251).

Proceedings for the recovery of a penalty may be taken by the District Council or any party aggrieved, *i.e.*, by some person whose legal rights are directly affected by the breach of a byelaw.<sup>2</sup>

The complainant must have a grievance beyond that which affects him as a ratepayer.

Public Health Act, 1875, section 183, is as follows :—

“183. Any Local Authority may, by any byelaws made by them under this Act, impose on offenders against the same such reasonable penalties as they think fit, not exceeding the sum of five pounds for each offence, and in the case of a continuing offence, a further penalty not exceeding forty shillings for each day after written notice of the offence from the Local Authority ; but all such byelaws imposing any penalty shall be so framed as to allow of the recovery of any sum less than the full amount of the penalty.

<sup>1</sup> Fulford v. Blackford, 1899, 80 L.T. 627.

<sup>2</sup> Robinson v. Currey, 1881, 7 Q.B.D. 165 ; and compare Drapers Co. v. Haddon, 1892, 57 J.P. 200.

“Nothing in the provisions of any Act incorporated herewith shall authorise the imposition or recovery under any byelaws made in pursuance of such provisions of any greater penalty than the penalties in this section specified.”

Where the District Council prosecute and recover penalties the whole sum belongs to them, to be carried to the District Fund, section 254 (1).

The Summary Jurisdiction Act, 1848, 11 & 12 Vict. c. 43, sec. 11, enacts that in all cases where no time is specially limited for making a complaint or laying an information, such complaint shall be made or such information laid within six calendar months from the time when the matter of such complaint or information respectively arose. The period of six months runs from the date of the commission of the offence, not from the discovery of it. Where a continuing offence, *i.e.*, one which from day to day offends, is in question, section 158 limits the time during which penalties may be recovered to twelve months from the first commission of the offending act.

A continuing offence may be committed by a person other than he who first did the offending act.<sup>1</sup> He who actually continues the offence is responsible, not the person who did the act and has ceased to superintend buildings and to have access to them.<sup>2</sup> The mere fact of ownership does not establish an offence against the owner of premises. Where a tenant who

<sup>1</sup> *L.C.C. v. Worley*, 1894, 2 Q.B. 826.

<sup>2</sup> *Welsh v. West Ham*, 1900, 1 Q.B. 324.

had offended against byelaws by erecting a building without the consent and knowledge of the owner, left the premises, the conviction of the owner for continuing the offence was quashed.<sup>1</sup> Contractors for works are ordinarily responsible for breaches of byelaws; but a contractor who is erecting houses in a new street is not responsible for a breach of a byelaw relating to it unless he himself has laid it out.

### *The Building Line.*

The term "street" embraces the road and the buildings which are built on the sites which abut on it, but an owner's right to utilise his land as a building site can only be restricted by his own choice as indicated in the plans deposited with the Council for approval, or by enforcement by the Council of the Building in Streets Act, 1888. If there are no buildings on sites abutting on a street there is no building line, and he who first builds in that street may erect buildings up to the boundary of his frontage. The building line is struck from existing buildings.

Section 3 of the Building in Streets Act, 1888, is as follows :—

"3. It shall not be lawful in any Urban District, without the written consent of the Urban Authority, to erect or bring forward any house or building in any street, or any part of such house or building, beyond the front main wall of the

<sup>1</sup> *Bennet v. Skegness*, 1890, 54 J.P. 469.

<sup>2</sup> *M. of Sunderland v. Brown*, 1889, 43 L.T. 478.



house or building on either side thereof in the same street, nor to build any addition to any house or building beyond the front main wall of the house or building on either side of the same.

"Any person offending against this enactment shall be liable to a penalty not exceeding forty shillings for every day during which the offence is continued after written notice in this behalf from the Urban Authority."

The consent of the District Council must be given in writing, but it need not be under seal.<sup>1</sup> It cannot be obtained after a building is erected. The Council are unlikely to condone an offence against the Act with *ex post facto* consent in writing.<sup>2</sup>

Where the matter is within the powers conferred on the Council, and they have honestly exercised their judgment according to law, the High Court will not review the decision of the Council, although they may not agree with it. The Act leaves the exercise of the power to regulate building line to the Local Authority.<sup>3</sup>

The District Council regulate the building line in streets which are main roads. Where a County Council objected to additions to the front of buildings contiguous to a main road, and withheld a part of the annual payment to the District Council who had retained the duty to repair, the Local Government Board decided the dispute against the County Council.<sup>4</sup>

<sup>1</sup> Paddington Vestry v. Bramwell, 1883, 41 J.P. 815.

<sup>2</sup> R. v. L.C.C., 1898, 76 L.T. 472.

<sup>3</sup> R. v. M. of Eastbourne, 1900, 16 T.L.R. 543.

<sup>4</sup> Blandford D.C. v. G.C., 1397, "Law Times" Npr., September 25.

Building line questions depend on all the facts of each case. The High Court cannot interfere to stay the Council from taking summary proceedings for infringing the building line in a street.<sup>1</sup> Builders must induce the Council to approve of the plans deposited, and at the same time get their consent in writing if the proposed buildings will advance beyond the building line. An oversight at the time when plans are approved will not defeat the right of the Council to enforce the Building in Streets Act, 1888, but the High Court will restrain capricious disapproval of plans, or refusal of consent, which unduly restricts an owner's right to utilise his property. Disapprovals should be clearly warranted by the facts. The Council are not invested with a general discretion to be exercised according to their own good wisdom, but with a legal discretion, *i.e.*, to discern what is just according to law.

Buildings on sites at the corners of intersecting streets abut on two streets so may have to conform to two building lines<sup>2</sup>; or they may abut on two streets, one at the back of the premises and one in the front. This is often the case where there are mews or streets of secondary means of access.<sup>3</sup>

It is not easy to find the front main wall of irregularly built buildings with wings. The line must be chosen from all the surrounding circum-

<sup>1</sup> *Kerr v. Preston Corp.*, 1877, 6 Ch. D. 463.

<sup>2</sup> *Gilbert v. Wandsworth B.W.*, 1889, 60 L.T. 149; *Warren v. Mustard*, 1892, 66 L.T. 26.

<sup>3</sup> *Paddington Vestry v. Bramwell*, 1889, 44 J.P. 815.

stances. Where there is a building on one side it controls the front line of a new building.<sup>2</sup> This is the case of the house at the end of a terrace ; but in all cases the buildings which affect building line must be in the same street within the meaning of the Act. A residence which stands back 62 feet from the side of the street is not near enough to it to affect building line ;<sup>3</sup> though it fronts and adjoins it for the purpose of contributing to private street expenses.

Infringements of building line cannot be remedied, at the instance of the Council, by demolition, nor can the Council in the exercise of their power to permit the advance of the front of a building sanction any encroachment on a part of the street which is dedicated to public use.<sup>4</sup>

*The Open Space—The Model—Byelaws—Front Open Space—Rear Open Space—Back Streets—Stables—Alternative Clauses—The Entranee to Streets.*

District Councils are empowered to make byelaws with respect to the sufficiency of the space about buildings to secure a free circulation of air ; and in order to be sufficient for that purpose such space must be unbuilt upon, *i.e.*, open. The Public Health Act, 1875, section 187, authorises such byelaws in regard to all new buildings, but the Model series restricts

<sup>1</sup> *A.G. v. Edwards*, 1891, 1 Ch. 194.

<sup>2</sup> *Leyton L.B. v. Causton*, 1893, 57 J.P. 135.

<sup>3</sup> *R. v. Fullwood L.B.*, 1895, 72 L.T. 592.

<sup>4</sup> *Schultz v. Galashiels*, 1896, 60 J.P. 277.

the application of the open space requirement to new domestic buildings. A domestic building is interpreted to mean—

“A dwelling-house or an office-building or other out-building appurtenant to a dwelling-house, whether attached thereto or not, or a shop, or any other building not being a public building, or of the warehouse class.”

and dwelling-house means a building used or constructed or adapted to be used wholly or principally for human habitation.

The open space in front of buildings may include the width of a street, but in the rear the open space must exclusively belong to the building, so that owner or occupier for the time being may be made responsible for any infringement of the byclaws.

No. 53 of the Model Series is as follows :—

“53. Any person who shall erect a new domestic building shall provide in front of such building an open space, which shall be free from any erection thereon above the level of the ground, except any portico, porch, step, or other like projection from such building, or any gate, fence, or wall, not exceeding seven feet in height, and which, measured to the boundary of any lands or premises immediately opposite, or to the opposite side of any street which such building may front, shall, throughout the whole line of frontage of such building, extend to a distance of 24 feet at the least; such distance being measured in every case at right angles to the external face of any wall of such building which shall front or abut on such open space.

“A person who shall make any alteration in or in addition to such building shall not, by such alteration or addition, diminish the extent of open space provided in pursuance of this byclaws in connection with such building.”

The latter paragraph cannot be enforced in respect of open spaces belonging to buildings in existence at the time the byelaws are confirmed.<sup>1</sup>

No. 53 secures the widening of a narrow street when old buildings are demolished, but as adherence to the width requirement may operate so as to destroy the building value of property, the Local Government Board sanction the use of a byelaw which obliges an owner to set back a new building on an old site, so far as shall be equal to one-half of the difference between the width of the street and 24 feet.

"53A. Every person who shall erect a new domestic building shall provide in front of such building an open space, which, measured to the boundary of any lands or premises immediately opposite, or to the opposite side of any street which may not be less than twenty-four feet in width at the point where such building may front thereon shall, throughout the whole line of frontage of such building, extend to a distance of twenty-four feet at the least; such distance being measured in every case at right angles to the external face of any wall of such building which shall front or abut on such open space.

"Where a new domestic building may be intended to front on a street laid out before the confirmation of these byelaws, and of a less width than twenty-four feet, the person who shall erect such building shall provide in front thereof an open space, which measured to the opposite side of such street throughout the whole line of frontage of such building, shall extend to a distance equal at least to the width of such street, together with one-half of the difference between such width and twenty-four feet.

"Any open space provided in pursuance of this byelaw shall be free from any erection thereon above the level of the

<sup>1</sup> *Tucker v. Rees*, 1861, 25 J.P. 749; and compare *Burgess v. Peacock*, 1891, 10 L.T. 617.

ground, except any portico, porch, step, or other like projection from such building, or any gate, fence, or wall not exceeding seven feet in height.

“A person who shall make any alteration in or addition to such building, shall not by such alteration or addition, diminish the extent of open space provided in pursuance of this bye-law, in connection with such building.”

The Model byelaw requires a minimum width of 10 feet for the rear open space, but it is usual to exact a minimum of 15 feet. Back streets, or streets of secondary means of access cannot be measured as part of the rear open space. The measurement across the rear open space is taken from the rear-most wall of the building or any back addition. Byelaw 54 of the Model series prohibits the erection of stables on the rear open space. The Local Government Board will sanction a byelaw dispensing with the provision of open space with stables which are appurtenant to a dwelling-house.

“Provided always that this byelaw shall not apply so as to require any open space to be provided in the rear of any domestic building, other than a dwelling-house, where such building is appurtenant to a dwelling-house, and is not of a greater height than such dwelling-house, and abuts on the open space provided in the rear of such dwelling-house, and where the open space so provided is sufficient to comply with the requirements of this byelaw.

“Provided further, that in any case where such building is of a greater height than the dwelling-house to which it is appurtenant, the foregoing exemption shall apply, if the open space left in the rear of such dwelling-house would be sufficient to comply with the requirements of this byelaw, were the dwelling-house of a height equal to the height of the other building.”

The Local Government Board have also in use special alternative clauses adapted for the requirements of sites abutting on two or more streets, for shallow sites, for corner sites, and for sites tapering to the rear.

### *The Entrance to Streets.*

Byelaw 8 of the Model series is as follows :—

“8. Every person who shall construct a new street shall provide at one end, at least, of such street an entrance of a width equal to the width of such street, and open from the ground upwards.”

This byelaw permits of streets closed at one end. A cul-de-sac street is not desirable, but if two entrances are exacted the byelaws tend to stop the partial development of building estates. Barriers are removed from time to time as the streets are laid out, but adherence to the plan of a building scheme cannot be enforced.

The entrance is the way into the street and being a part of the same street, but the meaning of this byelaw has been extended so as to control the mode of access to streets so that the approach to the new street through an old narrow street is deemed to be the entrance of the new street, and this interpretation of entrance stops the laying out of new streets from which access is to be gained from old narrow roads. It seems wrong. A landowner has nothing to do with the existing roads which have been made of the width formerly authorised in the district; but the Courts have thought that if a landowner in carrying



out one development of his estate cannot comply with the byelaws he must alter his scheme and adapt it so as to conform with their requirements.<sup>1</sup>

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<sup>1</sup> See *Heudon v. Pounce*, 1839, C.D. 602; *Bromley L.B. v. Lloyd*, 1892, 56 J.P. 278; *Barton Regis R.D.C. v. Stevens*, 1897, 61 J.P. 598.



## CHAPTER 8.

## COMPENSATION.

The method of enforcing existing rights by means of a claim for compensation in respect of damages sustained by reason of the exercise of powers conferred by the Public Health Acts on Local Authorities is substituted, by section 308 Public Health Act, 1875, for a remedy by action-at-law. Where the damages sustained would, but for the provisions of these Acts, have supported an action for injuriously affecting interests, a claim for compensation can be supported.<sup>1</sup>

Compensation cannot be claimed because a Local Authority exercises a statutory power. Damage must be proved to have been caused thereby. There is a statutory right to carry sewers through private property and make man holes and other adjuncts after reasonable notice has been given to the owners or occupiers, and the exercise of that power is not a matter for a claim for compensation,<sup>2</sup> nor is any

<sup>1</sup> *Bleket v. Met. Ry.*, 1867, L.R., 2 H.L. 175.

<sup>2</sup> *Swanston v. Twickenham L.B.*, 1879, 11 Ch.D. 838.

tender of compensation necessary where resulting damages can be foreseen. It is for the persons who sustain damage to make their claim.

“Section 308.—Where any person sustains any damage by reason of the exercise of any of the powers of this Act in relation to any matter as to which he is not himself in default, full compensation shall be made to such person by the Local Authority exercising such powers; and any dispute as to the fact of damage or amount of compensation shall be settled by arbitration in manner provided by this Act, or if the compensation claimed does not exceed the sum of twenty pounds, the same may, at the option of either party, be ascertained by and recovered before a court of summary jurisdiction.”

“Damage” includes every kind of loss caused by the authority of the Council where the acts which cause damage are authorised by statute. The term “injury” applies to loss resulting from unauthorised acts, which cannot be justified by the powers conferred by statute, and a “statutory power” is a power conferred by statute to do something which could not be lawfully done without it. Compensation gives back what is lost; where there is a trespass, a tortious act, or act done beyond the statutory power, the remedy for the injury is by action-at-law.<sup>1</sup>

A claim for compensation involves three positions :—

- (1) a lawful exercise of statutory powers ;
- (2) actionable damage, but for an Act of Parliament ;
- (3) the damages must arise from execution of the works, and not from use after construction.<sup>2</sup>

<sup>1</sup> *Emsley v. N.E.R.*, 1896, 1 Ch. 499.

<sup>2</sup> *Cessford v. Dover Hy Bd.*, “Times,” April 2, 1898.

Compensation is not in nature of a penalty, so a claimant is not obliged to make his claim within two years after damage sustained pursuant to the Civil Procedure Act, 1853.<sup>1</sup>

Where the owner's own default compels the Council to interfere with his property, no claim for compensation can be supported. The owner who claims must be the existing owner at the time of the execution of the works. A subsequent purchaser cannot support a claim.<sup>2</sup> Where a claim is contested, it is important that the items of loss sustained should be clearly stated and made a part of the submission to the arbitrator. If loss is only claimed in respect of execution of works, compensation cannot be awarded for tying up land by service of notice, assuming that serving a notice is an exercise of the powers of the Act within section 308.<sup>3</sup> Where it is assumed by both sides that circumstances warrant a claim for compensation, a claimant will not lose his right of action where it transpires that the works were unauthorised by statute.<sup>4</sup>

The fact of damage or the amount of compensation may be referred to arbitration; not legal liability. That must, if contested, be established by action.

Future as well as present damage is considered in assessing full compensation in respect of works done. Where a sewer is carried through land, the owner's

<sup>1</sup> *Thomson v. Glamorgan*, 1899, 2 Ch. 523.

<sup>2</sup> *Helmors v. East Ham L.B.*, "Times," 13 December 1893.

<sup>3</sup> *Davis v. Witney U.D.C.*, 1899, 15 T.L.R. 275.

<sup>4</sup> *Pentney v. Lynn Commrs.*, 1865, 12 L.T. 818.

right to build is restricted by section 26, and the value of adjoining land may be lessened, and stench may develop from man-holes. All matters to be considered in fixing compensation,<sup>1</sup> but remote and consequential damages, such as depreciation in trade by reason of proximity of a sewage farm, are not within section 308.

Frontagers who have to contribute to private street works may sustain a claim where alteration of the level of a street affects access to their premises,<sup>2</sup> but not by reason of loss attributable to blocking of the street by protracting the execution of the works.<sup>3</sup>

A claimant for compensation is entitled to have the amount of his claim fixed by an arbitrator although the Local Authority dispute their legal liability to make compensation at all under the Act. They can raise the question of liability in a defence to an action on the award,<sup>4</sup> but where the claimant's title to the land, in respect of damage to which compensation has been awarded, is not disputed, and the submission to arbitration has been made a rule of the High Court pursuant to subsection 14 of section 180, Public Health Act, 1874, the award is enforceable by motion and order of the Court.<sup>5</sup>

If a submission is entered into neither party can revoke it; but the award cannot be enforced in the

<sup>1</sup> *Uttley v. Todmorden L.B.*, 1874, 31 L.T. 415.

<sup>2</sup> *Reg. v. Wallasey L.B.*, 1869, L.R., 4 Q.B. 351.

<sup>3</sup> *Martin v. L.C.C.*, 1899, 80 L.T. 863.

<sup>4</sup> *Brierley Hill L.B. v. Pearsall*, 1884, 9 A.C. 535.

<sup>5</sup> *Re Walker and Beckenham L.B.*, 1882, 50 L.J. 264.

same manner as a judgment or order of the Court to the same effect as in the case of other awards where all liabilities are referred to an arbitrator under the Arbitration Act, 1889.<sup>1</sup> The award is final and binding on all parties to the reference. All objections to the validity of the proceedings of a District Council in regard to sufficiency of notice and other points which are open by way of appeal to the Local Government Board under section 268 are closed by the award.<sup>2</sup>

## ARBITRATION.

The statutory regulations as to arbitrations pursuant to the Public Health Acts are contained in sections 179 to 181, Public Health Act, 1875, which are as follows :—

“ Section 179.—In case of dispute as to the amount of any compensation to be made under the provisions of this Act (except where the mode of determining the same is specially provided for), and in case of any matter which by this Act is authorised or directed to be settled by arbitration, then, unless both parties concur in the appointment of a single arbitrator, each party shall appoint an arbitrator to whom the matter shall be referred.

“ Section 180.—With respect to arbitrations under this Act, the following regulations shall be observed ; that is to say,—

“ (1.) Every appointment of an arbitrator under this Act made on behalf of the Local Authority shall be under their common seal, and on behalf of any other party under his hand, or if such party be a corporation aggregate under their common seal :

<sup>1</sup> *Willesden L.B. v. Wright*, 1896, 2 Q.B. 412.

<sup>2</sup> *Randsworth D.C. v. Derrington*, 1897, 2 Ch. 138.

- “(2.) Every such appointment shall be delivered to the arbitrators, and shall be deemed a submission to arbitration by the parties making the same :
- “(3.) After the making of any such appointment the same shall not be revoked without the consent of both parties, nor shall the death of either party operate as a revocation :
- “(4.) If for the space of fourteen days after any matter by this Act authorised or directed to be settled by arbitration has arisen, and notice in writing by one party who has duly appointed an arbitrator has been given to the other party, stating the matter to be referred, and accompanied by a copy of such appointment, the party to whom notice is given fails to appoint an arbitrator, the arbitrator appointed by the party giving the notice shall be deemed to be appointed by and shall act on behalf of both parties :
- “(5.) If before the determination of any matter so referred any arbitrator dies or refuses, or becomes incapable to act, the party by whom such arbitrator was appointed may appoint in writing another person in his stead ; and if such party fails so to do for the space of seven days after notice in writing from the other party in that behalf, the remaining arbitrator may proceed *ex parte* ; and every arbitrator so appointed shall have the same powers and authorities as were vested in the arbitrator in whose stead the appointment is made :
- “(6.) If a single arbitrator dies or becomes incapable to act before the making of his award, or fails to make his award within twenty-one days after his appointment, or within such extended time, if any, as may have been duly appointed by him for that purpose, the matters referred to him shall be again referred to arbitration under the provisions of this Act, as if no former reference had been made :



- “(7.) Where there is more than one arbitrator, the arbitrators shall, before they enter on the reference, appoint by writing under their hands an umpire, and if the person appointed to be umpire dies or becomes incapable to act, the arbitrators shall forthwith appoint another person in his stead; and if the arbitrators neglect or refuse to appoint an umpire for seven days after being requested so to do by any party to the arbitration, the Local Government Board shall, on the application of any such party, appoint an umpire :
- “(8.) If the arbitrators fail to make their award within twenty-one days after the day on which the last of them was appointed, or within such extended time (if any) as may have been duly appointed by them for the purpose, the matters referred shall be determined by the umpire :
- “(9.) The time for making an award by arbitrators under this Act shall not in any case be extended beyond the period of two months from the date of the submission, and the time for making an award by an umpire under this Act shall not in any case be extended beyond the period of two months from the date of the reference of the matters to him :
- “(10.) Before any arbitrator or umpire enters on a reference under this Act he shall make and subscribe the following declaration before a justice of the peace; (that is to say),—
- “I, *A.B.*, do solemnly and sincerely declare that I will faithfully and honestly, and to the best of my skill and ability, hear and determine the matters referred to me under the Public Health Act, 1875.
- “*A.B.*”
- “(11.) Such declaration shall be annexed to the award when made; and any arbitrator or umpire who

wilfully acts contrary to such declaration shall be guilty of a misdemeanor :

- “(12.) Any arbitrator, arbitrators, or umpire, appointed by virtue of this Act may require the production of such documents in the possession or power of either party as they or he may think necessary for determining the matters referred, and may examine the parties or their witnesses on oath :
- “(13.) The costs of and consequent upon the reference shall be in the discretion of the arbitrator or arbitrators, or (in case the matters referred to are determined by an umpire) of the umpire :
- “(14.) Any submission to arbitration under the provisions of this Act may be made a rule of any of the superior courts, on the application of any party thereto :
- “(15.) The award of arbitrators or of an umpire under this Act shall be final and binding on all parties to the reference.”

The submission is a written agreement to submit present or future differences to arbitration, whether an arbitrator is named or not. It is under seal, and as authority passes by the instrument it is a deed and liable to stamp duty. A parol appointment of an arbitrator is inoperative.<sup>1</sup>

A set form of submission is not necessary, words which express the agreement of the parties to be bound by the decision of an arbitrator suffice. This concise form may be used.

“We agree to refer all matters in difference between us to the award of X .

Dated the                      day of                      .

A.B.

C.D.”

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<sup>1</sup> Gifford v. Bury Town Council, 1888, 20 Q.B.D. 364.

In contracts for the execution of works, it is usual to have a clause providing for the reference of differences that may arise to a single arbitrator. Where this is so, and differences arise if the parties do not concur in the appointment of an arbitrator, either party may serve the other parties with a written notice to appoint an arbitrator, and if the appointment is not made within seven days, the High Court or a Judge must, on the application of the party who gave the notice, appoint an arbitrator.<sup>1</sup>

Subsection (9) which purports to restrict the time for making the award to two months from the date of the submission relates to the conduct of arbitrators and umpires and the parties; it does not defeat the power of the High Court to enlarge the time for making the award.<sup>2</sup>

When the amount in dispute is less than twenty pounds, the matter may be determined at the option of either party before a court of summary jurisdiction (section 181).

The court fixes the amount, and orders payment of the sum and costs.

The arbitrator's fees should be ascertained, he cannot be compelled to submit the amount of them to arbitration. If they are extortionate a party can apply to have the award set aside, or bring an action

<sup>1</sup> *Eyre v. Corporation of Leicester*, 1892, 1 Q.B. 137.

<sup>2</sup> *Knowles v. Corporation of Bolton*, 1900, 16 T.L.R. 283, overruling *In re Mackenzie*, 1886, 17 Q.B.D. 114.

for the recovery of a part of the fees. His remuneration does not depend on the percentage on the sum awarded.

Of course an award is only binding on the parties to it.



## CHAPTER 9.

## NUISANCES.

*Interpretation—The Inspector—Nuisances within the Public Health Acts—Actions for loss caused—Premises—Entry to search—Animals—Manure heaps—Overcrowded houses—Factories—Smoke—The Notice to abate.*

The Public Health Act, 1875, imposes a duty on every district Council to cause to be made from time to time inspection of their district with a view to ascertain what nuisances exist calling for abatement pursuant to the powers conferred by that Act, and to enforce the provisions thereof in order to abate the same (section 92). The statutory interpretation of nuisance includes any insanitary state of things which materially diminishes the ordinary comfort of existence, as well as to insanitary conditions which are developed so as to destroy health. All foul smells diminish vitality, and where an insanitary result can be foreseen, the circumstances call for exercise of the powers of the Public Health Acts. The evidence which would be sufficient to support

an action on the circumstances of the case for a nuisance for private injury, suffices also to sustain summary proceedings to procure the abatement of a nuisance affecting health, and the same rule of responsibility of masters for the acts of their servants applies<sup>1</sup>, *e.g.*, where the District Council allow a contractor so to do work that by necessary consequence a nuisance is caused<sup>2</sup>; but actions for loss occasioned by breach of duty by public authorities must be commenced within six months after the cause of action arises. A cause of action consists in the breach of duty and the resulting damage, so time does not run against a suitor till the nuisance becomes appreciable to him. Slight underground leakage of sewage or gas is not noticed till by accumulation it injures.<sup>3</sup> Where a death is caused by breach of statutory duty, the limitation runs from the date of the death itself.<sup>4</sup>

A nuisance involves a continuous state; abatement cannot be applied to that which is at an end. The determining question is, will the state of things perceptibly diminish the ordinary comfort of existence of the inhabitants. Whatever their state of health may be the people must be preserved.<sup>5</sup>

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<sup>1</sup> *Q. v. Stevens*, 1806, 7 B. and S. 710.

<sup>2</sup> *Howland v. Dover Harbour Board*, 1898, 14 T.L.R. 355.

<sup>3</sup> *D. of Devon v. St. Mary, Islington*, Q.B.D., 25 November 1895.

<sup>4</sup> Fatal Accidents Act, 1846; *Markey v. Tolworth Joint Hospital*, 1900, 2 Q.B. 454.

<sup>5</sup> *Ridge v. Midland Ry.*, 1889, 53 J.P. 55; *Malton L.B. v. Farmers Manure Co.*, 1879, L.R., 4 Ex. D. 302.

The District Council appoint an inspector of nuisances to inspect their district for the detection of nuisances. All the salary of the officer is paid by the Council, he holds his office at their pleasure, and performs his duties according to regulations made by the Council (section 189). The Surveyor may be appointed inspector of nuisances (section 192); and the Medical Officer may exercise any of the powers with which an inspector of nuisances is invested by the Public Health Acts (section 191).

The nuisance sections of the Public Health Act, 1875, are aimed at nuisances arising from the acts of owners or occupiers of property, they do not touch nuisances caused by the construction of public works. Justices have no jurisdiction to make a summary order against a District Council in respect of a nuisance caused by a public sewer.<sup>1</sup> The interpretation of nuisance is contained in section 91, Public Health Act, 1875.

“91. For the purposes of this Act—

“1. Any premises in such a state as to be a nuisance or injurious to health ;

“2. Any pool, ditch, gutter, watercourse, privy, urinal, cess-pool, drain, or ashpit so foul or in such a state as to be a nuisance or injurious to health.”

“Premises” include lands and buildings, occupied or unoccupied. The owner of vacant land is responsible for its insanitary state.<sup>2</sup> He must not permit his land to be used for the deposit of refuse.

<sup>1</sup> Fulham Vestry v. L.C.C., 1897, 2 Q.B. 77.

<sup>2</sup> A.G. v. Tod-Mentley, 1897, 1 Ch. 560.



Surface nuisances may be detected by the nose without entering the premises. Where a nuisance is caused by defects in a drain, water-closet, earth-closet, privy, ashpit, or cesspool, and written application to the District Council is made thereof, they have a right to enter and search the premises above ground and under ground (section 41, P.H. Act, 1875). Notification of any nuisance may be given to the Council by any person aggrieved thereby, or by any two inhabitant householders, or by an officer of the Council, or by the Relieving Officer, or by the police (section 93, *ib.*).

“3. Any animal so kept as to be a nuisance or injurious to health.”

The keeping of animals in Urban Districts may be regulated by byelaws (section 44, *ib.*), and the keeping of a pig-stye or pigs in or near a street so as to be a nuisance is an offence (Town Police Clauses Act, 1847, section 28).

A byelaw may regulate the place and manner of keeping animals in towns ; but adherence to byelaws will not protect the keeping of pigs so as to be a nuisance. The keeping of pigs in a dwelling-house is prohibited, and to bring the animals into a town in the morning and remove them at night is an offence.<sup>1</sup>

“4. Any accumulation or deposit which is a nuisance or injurious to health.”

An accumulation or deposit involves some degree of permanency. Loading and unloading for con-

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<sup>1</sup> Steers v. Manton, 1893, 57 J.P. 380.

veyance on a railway, and retention for a few days in a wagon is not a deposit,<sup>1</sup> and the practice of spreading manure on the surface of fields is not a nuisance which can be stopped by summary proceedings; but in Urban Districts the removal of an accumulation of manure or other offensive matter may be enforced pursuant to a certificate of the inspector of nuisances, and the breach of regulations for the periodical removal of manure from stables, mews, and other premises, subjects the occupier to a penalty of 20s. for each day's offence (sections 49, 50, P.H. Act, 1875).

“5. Any house or part of a house so overcrowded as to be dangerous or injurious to the health of the inmates, whether or not members of the same family.”

“House” includes schools and factories and other buildings in which persons are employed. The onus of proving that persons are of the same family lies on the party who so asserts (Sanitary Act, 1866, section 7). A ship being within the district may be dealt with as if it were a house (section 110, P.H. Act, 1875). By section 9 of the Housing of the Working Classes Act, 1885, a tent, van, shed, or similar structure used for human habitation, which is in such a state as to be a nuisance or injurious to health, or which is so overcrowded as to be injurious to the health of the inmates, whether or not members of the same family, is to be deemed to be a nuisance

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<sup>1</sup> L.B. and S.C. Ry. v. Haywards Heath U.D.C., 1899, 80 L.T. 266.

within the meaning of section 91, Public Health Act, 1875, and the Council may make byelaws for promoting the cleanliness of tents, &c., and may authorise any person to enter such erections where a breach of the byelaws, or the existence of infectious disease is suspected.

“6. Any factory, workshop, or workplace not kept in a cleanly state, or not ventilated in such a manner as to render harmless as far as practicable any gases, vapours, dust, or other impurities generated in the course of the work carried on therein, that are a nuisance or injurious to health, or so overcrowded while work is carried on as to be dangerous or injurious to the health of those employed therein.”

The Factory and Workshop Act, 1878, as amended by the Acts of 1883 and 1891, regulate the sanitary condition of factories and workshops. The Act of 1883 transfers from the Inspectors of Factories to District Councils the duty to enforce the provision of these Acts which relate to the sanitary condition of bakehouses.

The nuisance provisions of the Public Health Act do not apply to the working of mines nor to the smelting of ores and minerals where the efficient working of the same would be interfered with by their enforcement (section 334, P.H. Act, 1875).<sup>1</sup>

“7. Any fireplace or furnace which does not, as far as practicable, consume the smoke arising from the combustible used therein, and which is used for working engines by steam, or in any mill, factory,

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<sup>1</sup> *Patterson v. Chambers Colliery*, 1892, 8 T.L.R. 278.

dyehouse, brewery, bakehouse, or gaswork, or in any manufacturing or trade process whatsoever; and

“Any chimney (not being the chimney of a private dwelling-house) sending forth black smoke in such quantity as to be a nuisance,

shall be deemed to be nuisances liable to be dealt with summarily in manner provided by this Act; provided—

“First. That a penalty shall not be imposed on any person in respect of any accumulation or deposit necessary for the effectual carrying on any business or manufacture if it be proved to the satisfaction of the court that the accumulation or deposit has not been kept longer than is necessary for the purposes of the business or manufacture, and that the best available means have been taken for preventing injury thereby to the public health.

“Secondly. That where a person is summoned before any court in respect of a nuisance arising from a fireplace or furnace which does not consume the smoke arising from the combustible used in such fireplace or furnace, the court shall hold that no nuisance is created within the meaning of this Act, and dismiss the complaint, if it is satisfied that such fireplace or furnace is constructed in such manner as to consume as far as practicable, having regard to the nature of the manufacture or trade, all smoke arising therefrom, and that such fireplace or furnace has been carefully attended to by the person having the charge thereof.”

Proceedings for emitting black smoke or failing to consume smoke should be taken against the owner or occupier of the premises,<sup>1</sup> but where mill-owners used well constructed furnaces, had forbidden their servants to let black smoke issue from the chimneys, and had

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<sup>1</sup> *Barnes v. Akroyd*, 1872, L.R. 7 Q.B. 474.

exercised efficient superintendence, a conviction was quashed. The owners had not done the act, neither had they omitted or suffered any act necessary to ensure compliance with section 91.<sup>1</sup> In another case, where the emission of smoke was caused by negligence of a stoker, the conviction of the manufacturer, who had not neglected supervision, was not sustained.<sup>2</sup> The second proviso to section 91 applies only to the offence created by the first part of subsection 7.<sup>3</sup>

*The Notice to Abate before Legal Proceedings.*

Primarily he who causes a nuisance is responsible for its continuance, and is compellable to abate it. If he cannot be found the occupier or owner of premises is liable to abate a nuisance thereon where it can be shown that it continues by his act, default, or sufferance.<sup>4</sup> The District Council must abate nuisances where they cannot compel others to do so.

A notice in the form given in the Schedule 4 of the Public Health Act, 1875, or to the like effect, varied as circumstances require, may be used. In notices and proceedings relating to nuisances, the "owner" or "occupier" may be so designated without name or further description (section 255, P.H. Act, 1870).

<sup>1</sup> Niven v. Greaves, 1890, 51 J.P. 548.

<sup>2</sup> Chisholm v. Doulton, 1899, 22 Q.B.D. 736.

<sup>3</sup> Weekes v. King, 1885, 53 L.T. 51.

<sup>4</sup> Conservators of Thames v. Port of London, 1894, 1 Q.B. 646.

Section 94, Public Health Act, 1875, is as follows :—

“94. On the receipt of any information respecting the existence of a nuisance, the Local Authority shall, if satisfied of the existence of a nuisance, serve a notice on the person by whose act, default, or sufferance the nuisance arises or continues, or, if such person cannot be found, on the owner or occupier of the premises on which the nuisance arises, requiring him to abate the same within a time to be specified in the notice, and to execute such works, and do such things as may be necessary for that purpose ; Provided—

“First. That where the nuisance arises from the want or defective construction of any structural convenience, or where there is no occupier of the premises, notice under this section shall be served on the owner ;

“Secondly. That where the person causing the nuisance cannot be found, and it is clear that the nuisance does not arise or continue by the act, default, or sufferance of the owner or occupier of the premises, the Local Authority may themselves abate the same without further order.”

Where a number of persons jointly contribute to cause a nuisance, proceedings may be taken against any one or more of such persons in one process, and the costs of abatement may be distributed as the Justices deem reasonable. Those who may be entitled by law to contribution from joint offenders, not joined in the proceedings, can enforce their claim by action (section 255, P.H. Act, 1875).

Where several persons drain their premises into one place, an order to abate may be made upon one whose drainage would of itself cause a nuisance, or

where it is only a partial cause of the existing nuisance.<sup>1</sup>

An owner must comply with a notice to abate, although he cannot enter the premises without his tenant's permission.<sup>2</sup>

Where property is held by lease for a term, and the lessee sublets, he, by receiving the rack-rent, becomes responsible as owner for nuisances caused by structural defects, and a rent collector becomes<sup>3</sup> answerable for expenses incurred about abatement of nuisances.<sup>4</sup>

A lessee for a long term is responsible for the abatement of nuisances, or a sub-lessee where the sub-letting is for the whole term, except a few days.<sup>5</sup>

If notice to abate a nuisance is served on an occupier or owner who, when executing the works necessary for abatement, finds that the nuisance is the result of defects of sewers or other works vested in the Council, the expenses so incurred may be recovered from the District Council.<sup>6</sup> Service of a notice preliminary to the issue of the statutory notice, where a penalty attaches to disobedience renders the

<sup>1</sup> Compare *Hampton v. Mellish*, 1894, 3 Ch. 163, where this rule was applied to noise nuisances.

<sup>2</sup> *Parker v. Inge*, 1886, 17 Q.B.D. 584.

<sup>3</sup> *Cook v. Montagu*, 1872, L.R., 7 Q.B. 418.

<sup>4</sup> *Broadbent v. Shepherd*, 1900, 17 T.L.R. 52.

<sup>5</sup> *Trueman v. Kerslake*, 1894, 2 Q.B. 774.

<sup>6</sup> *Andrew v. St. Olaves B. of W.*, 1898, 1 Q.B. 775.

Council liable to refund expenses incurred by persons about abatement of nuisances attributable to the Council.<sup>1</sup>

An agent of the owner is responsible; and if he resigns his employment pending an appeal the order of the Justices should be made against him. It is not personal being made to found the right of the Council to enter and abate and recover expenses of abatement from the owner.<sup>2</sup>

*The Complaint—Change of Ownership—Entry on Premises—Remedy by Action—Fiat of the Attorney-General—Toleration not to debar Remedy.*

Non-compliance with a notice to abate is followed by a complaint to a justice and issue of a summons to appear before the Court.

Section 96 provides that :—

“96. If the Court is satisfied that the alleged nuisance exists, or that although abated it is likely to recur on the same premises, the Court shall make an Order on such person requiring him to comply with all or any of the requisitions of the notice, or otherwise to abate the nuisance within a time specified in the Order, and to do any works necessary for that purpose; or an Order prohibiting the recurrence of the nuisance and directing the execution of any works necessary to prevent the recurrence; or an Order both requiring abatement and prohibiting the recurrence of the nuisance.

“The Court may by their Order impose a penalty not exceeding five pounds on the person on whom the Order is

<sup>1</sup> North v. Walthamstow, 1898, 62 J.P. 836.

<sup>2</sup> Broadbent v. Shepherd, 1901, 17 T.L.R. 460.



made, and shall also give directions as to the payment of all costs incurred up to the time of hearing or making the Order for abatement or prohibition of the nuisance."

If the execution of works is necessary either to abate or to prevent the recurrence of a nuisance, the works must be specified in the order of the justices, but not where the recurrence can be prevented by the mere forbearance by the person in default to do an act.<sup>1</sup>

Summary proceedings before justices in the County Court for recovery of the costs and expenses incurred in and about obtaining and carrying out a nuisance order must be commenced within six months from the time when they were incurred.<sup>2</sup>

"104. All reasonable costs and expenses incurred in making a complaint, or giving notice, or in obtaining any Order of the Court or any Justice in relation to a nuisance under this Act, or in carrying the same into effect, shall be deemed to be money paid for the use and at the request of the person on whom the Order is made, or if the Order is made on the Local Authority, or if no Order is made, but the nuisance is proved to have existed when the complaint was made or the notice given, then of the person by whose act or default the nuisance was caused; and in case of nuisances caused by the act or default of the owner of premises, such costs and expenses may be recovered from any person who is for the time being owner of such premises: Provided that such costs and expenses shall not exceed in the whole one year's rackrent of the premises."

Proceedings on complaints laid by private persons follow the practice usual on the hearing of complaints

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<sup>1</sup> *R. v. Horrocks*, 1900, 82 L.T. 767.

<sup>2</sup> *Hammersmith Vestry v. Lowenfeld*, 1896, 2 Q.B. 278.

laid by the District Council ; but the Court may, if it thinks fit, adjourn the hearing or further hearing of the summons for an examination of the premises where the nuisance is alleged to exist, and may authorise the entry into the premises of any constable or other person for the purposes of the examination. The Court may also authorise any constable or other person to do all necessary acts for executing an order made under the provision above cited, and to recover in a summary manner the expenses from the person on whom the order is made (section 105).

Where a complaint to a court of summary jurisdiction do not promise to yield an effectual remedy, the District Council are empowered to enforce the abatement of a nuisance by action in the High Court. If their property is materially and injuriously affected they can avail themselves of the power of the Court to restrain illegal acts by injunction, but there must be some special damage to property alleged and proved to be occasioned by the nuisance of which they complain ; that the public health alone is affected will not support an action at the instance of the Local Authority ; in that case the sanction of the Attorney-General must be obtained to enable the Local Authority to sue on behalf of the public in his name. The action is then brought by way of information, the practice being like that of any other action.<sup>1</sup> The appreciation of this rule is important to the ratepayers.

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<sup>1</sup> *Tottenham U.D.C. v. Williamson*, 1896, 2 Q.B. 353.

Where a person who complains of a nuisance can only abate it by going on the land of his neighbour, he must, except in case of emergency, first give notice to the owner to remove the nuisance.<sup>1</sup>

Where a nuisance within the limits of a district is caused by defaults occurring outside the district the like proceedings are available as if the defaults occurred within the district ; but the proceedings are to be taken before a Court having jurisdiction in the district where the default occurs (section 108). Toleration of a nuisance does not debar a District Council from their right to abate it ; and an unauthorised agreement to carry sewage coming from an adjoining district and causing a nuisance operates merely as a revocable licence, so that after notice given proceedings to abate a nuisance so caused are available.<sup>2</sup>

## HOUSING OF THE WORKING CLASSES ACT, 1890.

### *Insanitary Houses—Closing Orders—Demolition— Working Class Lodging-houses—Defaulting District Council.*

Justices have powers to prohibit the use of a house when by reason of any nuisance mentioned in section 91 it is unfit for human habitation (section 97, P.H. Act, 1875) ; and where there are two convictions for overcrowding a house within three months, whether

<sup>1</sup> *Jones v. Williams*, 1843, 11 M. and W. 176 ; and see *Lemmon v. Webb*, 1896, A.O. 1.

<sup>2</sup> *St. Mary, Islington v. Hornsey U.D.C.*, 1900, 1, Ch. 695.

the persons convicted are or are not the same, the Court may make an Order prohibiting the use of the premises for human habitation (section 109, *ib.*).

Part II. of the Housing of the Working Classes Act, 1890, which relates to unhealthy dwelling-houses applies to Urban and Rural Districts. Thereby a duty is cast on the medical officer of health to notify the Council when it appears to him that a house is unfit for human habitation ; and any four householders may make a complaint to him in order to compel the Council to enforce the provisions of the Act (53 & 54 Vict. c. 70, secs. 30, 31). Where the Council resolve to compel the abatement of the nuisance they serve on the owner a notice requiring him to do the work necessary to render the house fit for habitation, as in other nuisance proceedings under section 94, or they can take proceedings for the express purpose of obtaining a Closing Order of a Court of Summary Jurisdiction pursuant to section 32 of the Housing of the Working Classes Act, 1890, which is as follows:—

“ 32.—(1.) It shall be the duty of every Local Authority to cause to be made from time to time inspection of their district, with a view to ascertain whether any dwelling-house therein is in a state so dangerous or injurious to health as to be unfit for human habitation, and, if on the representation of the medical officer, or of any officer of such authority, or information given, any dwelling-house appears to them to be in such state, to forthwith take proceedings against the owner or occupier for closing the dwelling-house under the enactments set out in the Third Schedule to this Act.

“(2.) Any such proceedings may be taken for the express purpose of causing the dwelling-house to be closed, whether

the same be occupied or not, and upon such proceedings the court of summary jurisdiction may impose a penalty not exceeding twenty pounds, and make a closing order, and the forms for the purposes of this section may be those in the Fourth Schedule to this Act, or to the like effect, and the enactments respecting an appeal from a closing order shall apply to the imposition of such penalty, as well as to a closing order.

“(3.) Where a closing order has been made as respects any dwelling-house, the Local Authority shall serve notice of the order on every occupying tenant of the dwelling-house, and within such period as is specified in the notice, not being less than seven days after the service of the notice, the order shall be obeyed by him, and he and his family shall cease to inhabit the dwelling-house, and in default he shall be liable to a penalty not exceeding twenty shillings a day during his disobedience to the order. Provided that the Local Authority may make to every such tenant such reasonable allowance on account of his expenses in removing as may have been authorised by the court making the closing order, which authority the court is hereby authorised to give, and the amount of the said allowance shall be a civil debt, due from the owner of the dwelling-house to the Local Authority, and shall be recovered summarily.”

An owner may obtain from the District Council a charging order at the rate of 6 per cent. on the amount expended on works done by him on the requisition of the Council, such charge to be payable for a term of 30 years, and to have priority over all other charges and interests, except charges created under an Act authorising advances of public money (sections 36 and 37 *ib.*).

Where a closing order has been made by the Justices and the owner neglects to render the house

fit for habitation, the Council may make an order for the demolition of the house subject to the right of appeal by the owner to Quarter Sessions. This order is operative by force of the Council's authority and is executed by their officers pursuant to section 33 :—

“33.—(1.) Where a closing order has been made in respect of any dwelling-house, and not been determined by a subsequent order, then the Local Authority, if of opinion that the dwelling-house has not been rendered fit for human habitation, and that the necessary steps are not being taken with all due diligence to render it so fit, and that the continuance of any building being or being part of the dwelling-house is dangerous or injurious to the health of the public or of the inhabitants of the neighbouring dwelling-houses, shall pass a resolution that it is expedient to order the demolition of the building.

“(2.) The Local Authority shall cause notice of such resolution to be served on the owner of the dwelling-house, and such notice shall specify the time and place appointed by the Local Authority for the further consideration of the resolution, not being less than one month after the service of the notice, and any owner of the dwelling-house shall be at liberty to attend and state his objections to the demolition.

“(3.) If upon the consideration of the resolution and the objections the Local Authority decide that it is expedient so to do, then, unless an owner undertakes to execute forthwith the works necessary to render the dwelling-house fit for human habitation, the Local Authority shall order the demolition of the building.

“(4.) If an owner undertakes as aforesaid to execute the said works, the Local Authority may order the execution of the works, within such reasonable time as is specified in the order, and if the works are not completed within that time or any extended time allowed by the Local Authority or a court of summary jurisdiction the Local Authority shall order the demolition of the building.”

The Act empowers a District Council to purchase obstructive buildings, *i.e.*, such buildings as stop ventilation or conduce to make other buildings unfit for habitation, or, in case the owner desires to retain the site of them, to make an order for their demolition. The provisions of the Lands Clauses Acts apply to the purchase of obstructive buildings, and disputes as to compensation are referable to arbitration. Section 39 empowers the Council to direct a scheme to be prepared for the improvement of an area from which obstructive buildings have been removed, and to utilize such area for any of the following purposes ; either—

- (i) dedicated as a highway or open space ; or
- (ii) appropriated, sold, or let for the erection of dwellings for the working classes ; or
- (iii) exchanged with other neighbouring land which is more suitable for the erection of such dwellings, and on exchange will be appropriated, sold, or let for such erection.

When the District Council have in contemplation the enforcement of the Honsing of the Working Classes Act, 1890, it is usual to notify the owners of the insanitary property of their intention, and to indicate their requirements. Requirements such as follow are not unusual :—

REQUIREMENTS of the COUNCIL in cases of INSANITARY PROPERTY in their DISTRICT for the Purpose of Improving the Sanitary Condition thereof.

An impervious pavement must be provided immediately adjoining all dwellings, and, where the limits of space admit,



for at least 15 feet from such dwellings. Buckley tiling, 9 ins. by 9 ins. by  $1\frac{3}{4}$  ins. laid on a 3-inch bed of clean sand, or good smooth-faced flags laid on a similar bed, has been adopted by the Council as a suitable form for such pavement.

The abolition of all privy middens and the substitution of either a water carriage system or properly constructed pail closets for excrement disposal to the satisfaction of the Council, as the circumstances of each case shall admit, is insisted upon by the Council.

All ashpits must be dry ashpits or properly constructed ash receptacles, and must not be of a capacity exceeding that provided by the byelaws, viz., 12 cubic feet. Moveable metallic ashbins are preferred.

All dwellings must be provided with through ventilation by means of doors and windows communicating with the open air.

Each dwelling must be provided with not less than the amount of free air space around such dwellings required by the byelaws.

Each dwelling must be provided with an adequate water supply.

The approach to courts and alleys will have to be taken into consideration with a view to dealing therewith.

The Housing of the Working Classes Act, 1900,<sup>1</sup> enables Urban District Councils to acquire lodging houses for the working classes outside the urban district, and enables any District Council to lease land acquired for such purposes subject to the condition that the lessee shall carry the Act into execution by building and maintaining lodging-houses.

Heretofore a local inquiry has preceded the adoption of Part 3 of the Housing of the Working Classes Act, 1890, by the Council of a Rural District, hereafter Part 3 may be adopted with the consent of the

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<sup>1</sup> 63 & 64 Vict. c. 59.



County Council, either for the whole of their district, or for any contributory places therein ; and where a Parish Council resolve that a Rural District Council ought to have taken steps for the adoption of Part 3 of the Act of 1890, or to have exercised their powers thereunder, the County Council may after due inquiry resolve to enforce Part 3 of the Act, and such resolution will have effect as an adoption of Part 3 by the Rural District Council.

The expression "lodging-house" includes separate houses or cottages for the working classes, and "cottage" may include a garden of not more than half an acre, and of an annual value not exceeding three pounds.<sup>1</sup>

District Councils may contract for the purchase or lease of lodging-houses already or hereafter to be built, and may appropriate them for the purposes of the Act with the consent of the Central Authorities. Byelaws for the management, use and regulation of lodging-houses are made by District Councils, and confirmed by the Local Government Board, and fines for the breach thereof are to be paid to the credit of the fund out of which the expense of executing the Act is defrayed. In Urban Districts such expenses are defrayed as general expenses, and in Rural Districts as special expenses, unless the County Council when they sanction the adoption of Part 3 declare that the expenses shall be defrayed as general expenses.

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<sup>1</sup> Section 53 H.W.C. Act, 1890.

Except where a lodging-house is used as a separate dwelling it is obligatory to make provisions in the byelaws for the following purposes :—

“For securing that the lodging-houses shall be under the management and control of the officers, servants, or others appointed or employed in that behalf by the local authority.”

“For securing the due separation at night of men and boys above eight years old from women and girls.

“For preventing damage, disturbance, interruption, and indecent and offensive language and behaviour and nuisances.

“For determining the duties of the officers, servants, and others appointed by the local authority.”

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<sup>1</sup> Sections 62, 65, 71 H.W.C. Act, 1890.



## CHAPTER 10.

## OFFENSIVE TRADES.

*The Brickyard—The Alkali Acts—Stinks.*

The prohibition of the Public Health Act, 1875, against the establishment of offensive trades within an urban district relates only to businesses or manufactures in the conduct or process of which there is something inherently noxious to health. Persons may live healthily in the atmosphere of a fried fish shop;<sup>1</sup> and the pungent odours of the brick kiln may be breathed without loss of health. So the High Court say;<sup>2</sup> but who can enjoy health when enveloped in sulphurous fumes? The ingredient of happiness here below is outside the scope of the Public Health Acts. But whose senses do not bear witness that processes involved in brick making are noxious to health; ballast burning thickens the air with effluvia and impalpable dust which must lower the vitality of those who have to inhale them? The languishing state of vegetation in the neighbourhood of extensive brickworks or chemical works testify of

<sup>1</sup> Braintree L.B. v. Boyton, 1885, 52 L.T. 99.

<sup>2</sup> Wanstead L.B. v. Hill, 1863, 7 L.T. 744.

the noxious effects of fumes and dust. Tall shafts to the furnaces elevate the acid products and dust and mitigate the evil effects of a process to adjoining property to the detriment of residents at a distance from the works. In a recent ballast-burning case, the brick-kilns were furnished with chimneys 250 feet high, so that the impalpable dust was deposited on foliage a mile away.<sup>1</sup>

Section 112, Public Health Act, 1875, enacts :—

“Section 112. Any person, who after the passing of this Act, establishes within the district of an Urban Authority, without their consent in writing, any offensive trade; that is to say, the trade of—

“Blood boiler, or

“Bone boiler, or

“Fellmonger, or

“Soap boiler, or

“Tallow melter, or

“Tripe boiler, or

“Any other noxious or offensive trade, business, or manufacture,

shall be liable to a penalty not exceeding fifty pounds in respect of the establishment thereof, and any person carrying on a business so established shall be liable to a penalty not exceeding forty shillings for every day on which the offence is continued, whether there has or has not been any conviction in respect of the establishment thereof.”

This section prohibits the new establishment of a noxious business without the consent of the District Council. If, when established with such consent, the business is carried on so as to be a nuisance, there is a remedy under the nuisance section avail-

<sup>1</sup> Farnsworth v. Hill, the “Times,” 9th February 1898.

able, or by action for an injunction at the suit of those who suffer loss. Other businesses which are necessarily noxious are not to be established without the consent of the District Council. A small-pox hospital is not a noxious business.<sup>1</sup>

The Alkali Works Regulation Act, 1881, is intended to protect the public from the injurious practice of discharging acid gases from the chimneys of chemical works. Any District Council can complain to the Local Government Board where such works are a nuisance (44 & 45 Vict. c. 37, s. 27). Manufacturers find it cheaper to discharge waste products from their chimneys than to condense them, so the evil is not easily stopped. Directly the official inspector approaches the flow of acid gas up the chimney is diminished. Under the Petroleum Acts, 1871-1881, which regulate the storage of petroleum and kindred substances, the District Council is the licensing authority. The County Council are the Local Authority for the execution of the Explosives Act, 1875, in counties; and in boroughs with a population of less than 10,000. The County Council are empowered to delegate their powers under the Act to a District Council (L.G. Act, 1888, section 28 (2).) Any premises may be registered, but licensees to store explosives are only granted subject to the regulations in force.

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<sup>1</sup> Withington L.B. v. Manchester Corporation, 1893, 2 Ch. 19.

Byelaws may be made in order to prevent or diminish the injurious effects of newly established offensive trades (section 113, P.H. Act, 1875), and section 114, Public Health Act, affords means of compelling an Urban Council to institute summary proceedings to procure the abatement of nuisances caused by offensive effluvia from business of any kind :—

“Section 114. Where any candle-house, melting house, melting place, or soap-house, or any slaughter-house, or any building or place for boiling offal or blood, or for boiling, burning, or crushing bones, or any manufactory, building, or place used for any trade, business, process, or manufacture causing effluvia is certified to any Urban Authority by their medical officer of health, or by any two legally qualified medical practitioners, or by any ten inhabitants of the district of such Urban Authority, to be a nuisance or injurious to the health of any inhabitants of the district, such Urban Authority shall direct complaint to be made before a Justice, who may summon the person by or on whose behalf the trade so complained of is carried on to appear before a Court of Summary Jurisdiction.

“The Court shall inquire into the complaint, and if it appears to the Court that the business carried on by the person complained of is a nuisance, or causes any effluvia which is a nuisance or injurious to the health of any of the inhabitants of the district, and unless it be shown that such person has used the best practicable means for abating such nuisance, or preventing or counteracting such effluvia, the person so offending (being the owner or occupier of the premises, or being a foreman or other person employed by such owner or occupier), shall be liable to a penalty not exceeding five pounds, nor less than forty shillings, and on a second and any subsequent conviction to a penalty double the

amount of the penalty imposed for the last preceding conviction, but the highest amount of such penalty shall not in any case exceed the sum of two hundred pounds.

“Provided that the Court may suspend its final determination on condition that the person complained of undertakes to adopt, within a reasonable time, such means as the Court may deem to be practicable and order to be carried into effect for abating such nuisance, or mitigating or preventing the injurious effects of such effluvia, or if such person gives notice of appeal to the Court of Quarter Sessions in manner provided by this Act.

“Any Urban Authority may, if they think fit, on such certificate as is in this section mentioned, caused to be taken any proceedings in any superior Court of Law or Equity against any person in respect of the matters alleged in such certificate.”

This section is applicable to cases where offensive effluvia causes discomfort to life.<sup>1</sup> If the Council neglect to act on the certificate, a complaint may be made of their default to the Local Government Board pursuant to section 299, Public Health Act, 1875.

The burden of proving that the best practicable means of preventing a nuisance have been used lies on the offender. If the court suspends its judgment pending the adoption of the remedial measures the hearing may be adjourned and when the nuisance is abated the court can, pursuant to section 16, Summary Jurisdiction Act, 1879, without proceeding to conviction, dismiss the information with or without payment of damages or costs.

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<sup>1</sup> *Malton L.B. v. Farmers Manure Co.*, 1879, 4 Ex.D. 302.



Where a nuisance arises in an Urban District from an offensive trade carried on in an adjoining district, the like proceedings may be taken before a court having jurisdiction in the district where the trade is carried on, section 115, Public Health Act, 1875.

In districts where the Public Health Acts Amendment Act, 1890, is in force the Council are empowered to make byelaws for prescribing the time for the removal or carriage through the streets of any fœcal or offensive or noxious matter or liquid whether such matter or liquid shall be in course of removal or carriage from within or without or through the district; and where such byelaws are not in force the carting of noxious offal through streets can be stopped by injunction from the High Court.<sup>1</sup>

## SCAVENGING—ASHPITS—DEPOSITS OF MANURE.

It is the duty of every District Council to supervise the construction and cleansing of ashpits, ash-tubs and other receptacles for the deposit of ashes, fœcal matter or refuse, section 40, Public Health Act, 1875; section 11, Public Health Act Amendment Act, 1890. A house may not be erected without an ashpit furnished with proper doors and coverings, and the owner of any house, old or new, may be compelled to supply an ashpit where an officer of the Council reports on such a want, sections

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<sup>1</sup> A.G. v. Higgins, "The Times," August 11, 1900.

35 and 36, Public Health Act, 1875.<sup>1</sup> The provision of several ashpits in factories may be enforced, and ashpits for public accommodation may be provided by any Urban District Council, sections 38 and 39, Public Health Act, 1875.

The duty to cleanse streets and remove house refuse is imposed by section 42, Public Health Act, 1875.

"Section 42.—Every local authority may, and when required by order of the Local Government Board shall themselves undertake or contract for—

"The removal of house refuse from premises; the cleansing of earthclosets, privies, ashpits and cesspools; either for the whole or any part of their district: Moreover, every Urban Authority and any Rural Authority invested by the Local Government Board with the requisite powers may, and when required by the order of the said board shall themselves undertake or contract for the proper cleansing of streets, and may also themselves undertake or contract for the proper watering of streets for the whole or any part of their district.

"All matters collected by the Local Authority or contractor in pursuance of this section may be sold or otherwise disposed of, and any profits thus made by an Urban Authority shall be carried to the account of the fund or rate applicable by them for the general purposes of this Act; and any profits thus made by a Rural Authority in respect of any contributory place shall be carried to the account of the fund or rate out of which expenses incurred under this section by that authority in such contributory place are defrayed.

"If any person removes or obstructs the Local Authority or contractor in removing any matters by this section authorised to be removed by the Local Authority, he shall for each offence be liable to a penalty not exceeding five pounds: Provided that the occupier of a house within the district shall not be liable to such penalty in respect of any such matters

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<sup>1</sup> District Councils usually require metallic ashbins.

which are produced on his own premises and are intended to be removed for sale or for his own use, and are in the meantime kept so as not to be a nuisance."

Cleansing includes disinfecting.<sup>1</sup> House refuse has been described as "home, occupation inhabitaney, or domestic rubbish."<sup>2</sup> The interpretation of "house" in section 4 is not to be read into section 42. A steam-laundry although containing a house is not a house in respect of which the duty to remove house refuse is imposed.<sup>3</sup>

The scavenging of any street or road may be undertaken by Urban District Councils as a general expense of the district, and any Rural or Urban Council may, pursuant to section 148, Public Health Act, 1875, by agreement with any person liable to repair any street, take on themselves the maintenance, repair, cleansing, or watering of any such street or of any road over a county bridge within their district, section 25 (1) Local Government Act, 1894. There is no obligation to remove substances improperly cast into ashbins such as bottles or boots.<sup>4</sup> Substances which are produced on the premises and which are not intended to be cast away as rubbish cannot be removed as such.<sup>5</sup> Those who forbid the entry on the premises for the purpose of removing rubbish, obstruct the execution of the Act, and are subject to a penalty of five pounds.<sup>6</sup>

<sup>1</sup> *Barnett v. Laskey*, 1899, 68 L.J. Q.B. 55,

<sup>2</sup> *Gay v. Cadby*, 1877, 2 O.P.D. 391.

<sup>3</sup> *London Laundry Co. v. Willesden L.B.*, 1892, 2 Q.B. 271.

<sup>4</sup> *Collins v. Paddington*, 1879, 40 L.T. 843.

<sup>5</sup> *Filby v. Combe*, 1837, 2 M. and W. 677.

<sup>6</sup> *Borrow v. Howland*, 1896, 12 T.L.R. 414.

If a District Council, who have themselves undertaken or contracted for the removal of house refuse from premises, fail, after notice in writing from the occupier to remove within seven days any such refuse, they incur liability to pay to the occupier a penalty of 5s. for every day during which such default continues (section 43, P.H. Act, 1875). Scavenging is not done as a part of the duty of Surveyor of Highways, so an action lies against the Council where their neglect to remove refuse causes loss to an occupant.<sup>1</sup> But the Council are not responsible for damage caused by default of a contractor.<sup>2</sup>

Ashes and clinkers from the furnace of a machine used for trade purposes are trade refuse;<sup>3</sup> but ashes of coals consumed in a bakery or hotel are house refuse; and even clinkers from furnaces used to generate steam for electric lighting and heating of an extensive hotel have not been considered trade refuse; but it is not easy to see how the Langham Hotel is a house for the purpose of removal of domestic rubbish.<sup>4</sup>

Section 44, Public Health Act, 1875, provides:—

“Where the Local Authority do not themselves undertake or contract for—

“The cleansing of footways and pavements adjoining any premises :

“The removal of house refuse from any premises ;

<sup>1</sup> *Gdns. of Holborn v. St. Leonards, Shoreditch*, 1872, 2 Q.B.D. 145.

<sup>2</sup> *Ellis v. Strand B.W.*, 1892, 67 L.T. 307.

<sup>3</sup> *Gay v. Cadby*, 1877, 2 Q.B.D. 391.

<sup>4</sup> *St. Martins v. Gordon*, 1891, 1 Q.B. 61.

“The cleansing of earth-closets, privies, ashpits, and cess-pools belonging to any premises ; they may make byelaws imposing the duty of such cleansing or removal, at such intervals as they think fit, on the occupier of any such premises.

“An Urban Authority may also make byelaws for the prevention of nuisances arising from snow, filth, dust, ashes, and rubbish, and for the prevention of the keeping of animals on any premises so as to be injurious to health.”

If the Council undertake the removal of snow from pavements they are not responsible for an injury caused to a passenger by neglect to clear snow away.<sup>1</sup>

Byelaws relating to the keeping of pigs should be adapted to locality ; a byelaw prohibiting the keeping of pigs within 50 feet of a dwelling in a rural district was deemed unreasonable and void ;<sup>2</sup> but in an urban district a similar byelaw may reasonably prohibit a piggery within 100 feet of a house.<sup>3</sup>

Where a byelaw was directed against the deposit of manure or noxious matter on the surface of a street or place, and a railway company who brought manure from London retained it on their premises three days, when a nuisance was caused by its removal, were convicted of an offence, the conviction was quashed by the High Court on the ground that there was no deposit. “Deposit” means something put down in a place to be left there for a permanence,

<sup>1</sup> *Saunders v. Holborn B.W.*, 1895, 1 Q.B. 65.

<sup>2</sup> *Heap v. Burnley Union*, 1884, 12 Q.B.D. 617.

<sup>3</sup> *Wanstead v. Wooster*, 1873, 37 J.P. 403.

and the ordinary course of loading and unloading from the wagons of a railway company is done in the course of delivery.<sup>1</sup>

Public notice may be given for the periodical removal of manure or other refuse from mews, stables, or other premises in Urban Districts; and where the inspector of nuisances certifies that an offensive accumulation of manure or filth exists, and notice to remove the same is not complied with within 24 hours, such manure is vested in the Council who may enter the premises, remove the manure, and sell it (sections 49, 50, P.H. Act, 1875). Urban Councils are empowered to provide buildings and places for the deposit of refuse collected by them in the exercise of their function as scavengers (*see* 45 P.H. Act, 1875).

Complaints of the insanitary condition of drains, cesspools, or ashpits may be made by any one to the officers of the Council, and where such a complaint is made in writing such nuisances are abateable summarily. This important supplement to the scavenging powers conferred by the Public Health Act, is contained in section 41, Public Health Act, 1875.

"41. On the written application of any person to a Local Authority, stating that any drain, watercloset, earthcloset, privy, ashpit, or cesspool, on or belonging to any premises within their district is a nuisance or injurious to health (but not otherwise), the Local Authority may, by writing empower

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<sup>1</sup> L.B. & S.C. Ry. v. Haywards Heath U.D.C., 1899, 80 L.T. 266; G.N. Ry. v. Lurgan, 1897, 1 N.R. 340.

their surveyor or inspector of nuisances, after twenty-four hours written notice to the occupier of such premises, or, in case of emergency without notice, to enter such premises with or without assistants, and cause the ground to be opened, and examine such drain, watercloset, earthcloset, privy, ashpit, or cesspool. If the drain, watercloset, earthcloset, privy, ashpit, or cesspool, on examination is found to be in proper condition, he shall cause the ground to be closed, and any damage done to be made good as soon as can be, and the expenses of the works shall be defrayed by the Local Authority. If the drain, watercloset, earthcloset, privy, ashpit, or cesspool, on examination appear to be in bad condition, or to require alteration or amendment, the Local Authority shall forthwith cause notice in writing to be given to the owner or occupier of the premises, requiring him forthwith or within a reasonable time therein specified to do the necessary works; and if such notice is not complied with, the person to whom it is given shall be liable to a penalty not exceeding ten shillings for every day during which he continues to make default; and the Local Authority may, if they think fit, execute such works, and may recover in a summary manner from the owner the expenses incurred by them in so doing, or may by order declare the same to be private improvement expenses."

The prescribed written application to the Council may be made by any inhabitant, or an officer, or the Council. Where section 19 of the Public Health Act, 1890, brings combined drainage of terraces within this section for the purposes of abating nuisances at the cost of the different owners of the premises, a joint notice may be given to them.<sup>1</sup>

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<sup>1</sup> *Lancaster v. Barnes*, 1898, 46 W.R. 623.



## CHAPTER 11.

## HOSPITALS.

*Nuisance from danger of Infection—Maintenance of  
Paupers—Notification—Doctors' Fees.*

Pursuant to 62 & 63 Vict. c. 8, the Infectious Disease (Notification) Act, 1889, is now in force in every Urban and Rural District. That Act requires persons in charge of or attending on any inmate of a habitable building within the district who is suffering from an infectious disease to notify the Medical Officer of Health thereof.

The sanitation of no district is so complete as to exempt it from the occurrence of infectious disease, and to cope with and suppress them the provident provision of hospital accommodation is essential.

District Councils are empowered by the Public Health Act, 1895, to provide hospitals for the use of the sick inhabitants of their own districts, and of such as require medical or surgical aid.



Such hospitals may be general or special, with respect to the kinds of diseases admitted for treatment. County Councils are also empowered to make orders pursuant to the Isolation Hospitals Act, 1893, for the constitution of hospital districts, and for the establishment of hospitals for the reception of patients suffering from infectious diseases.

It is not obligatory on District Councils to provide hospitals, so they are not permitted to establish them so as to expose inhabitants to the danger of infection,<sup>1</sup> but the establishment of a hospital for infectious diseases in a town is not necessarily a nuisance. Section 131, Public Health Act, 1875, is as follows :—

“Section 131. Any Local Authority may provide for the use of the inhabitants of their districts hospitals or temporary places for the reception of the sick, and for that purpose may—

“Themselves build such hospitals or places of reception ; or

“Contract for the use of any such hospital, or part of a hospital, or place of reception ; or

“Enter into any agreement with any person having the management of any hospital for the reception of the sick inhabitants of their district, on payment of such annual or other sum as may be agreed on.”

“Two or more Local Authorities may combine in providing a common hospital.”

A Council may erect their hospital within or without their own district, and the consent of the Council of an adjoining district in which it is to be

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<sup>1</sup> Met. Asylum District v. Hill, 1881, 6 A.C. 193.

erected is not necessary.<sup>1</sup> Prejudices against the proximity of a hospital for infectious diseases does not entitle neighbours to stop its erection or use, nor do fears, based on a theory of aërial convection; but apprehensions based on actual danger of infection will support an action for an injunction.<sup>2</sup>

Leases frequently contain restrictive covenants providing against the erection or establishment of hospitals. When acquiring land for hospital purposes the rights of neighbouring owners should be considered. To cause apprehension of risk of infection is deemed a breach of a covenant against the establishment of a business to the annoyance of owners of residences on a building estate,<sup>3</sup> and where pay patients are received any hospital is a "*business*."<sup>4</sup>

Hospitals are provided for the benefit of all the inhabitants, rich and poor, all patients must be admitted if room permits,<sup>5</sup> but cost of maintenance of a non-pauper patient is a debt due to the Council from such patient. Patients' expenses include cost of conveying, removing, feeding, providing medicines, disinfecting, and all other things required for patients individually. The pauper patients are left chargeable to the district, but where admitted in isolation hospitals by section 19 of the Isolation Hospitals Act,

<sup>1</sup> *Withington v. Corpn. of Manchester*, 1893, 2 Ch. 19; *A.G. v. Corpn. of Manchester*, 1893, 2 Ch. 87.

<sup>2</sup> *A.G. v. Guildford Joint Hospital Board*, the "*Times*," November 20, 1895.

<sup>3</sup> *Todheatty v. Barham*, 1888, 40 Ch.D. 80.

<sup>4</sup> *Bramwell v. Lacy*, 1879, 10 Ch.D. 691.

<sup>5</sup> *Reg. v. Rawtenstall Corporation*, 1894, 10 T.L.R. 643.

1893, the expenses of patients in receipt of poor law relief at the time of reception or within 14 days may be recovered from the Guardians of the Union from which they are sent.

Section 132, Public Health Act, 1875, is as follows :—

“Any expenses incurred by a Local Authority in maintaining in a hospital, or in a temporary place for the reception of the sick (whether or not belonging to such Authority), a patient who is not a pauper, shall be deemed to be a debt due from such patient to the Local Authority, and may be recovered from him at any time within six months after his discharge from such hospital or place of reception, or from his estate in the event of his dying in such hospital or place.”

The liability of a non pauper is personal to the patient. Parents are not liable for expenses incurred about their children, but medical attendance being a necessary minors are themselves liable. The common law imposes on all persons a liability to repay expenses necessarily incurred for their benefit.<sup>1</sup>

The Guardians of the Poor have power to transfer to the Rural District Council any hospital established for paupers for the use of the whole district or of any contributory place therein, and if such hospital is for the use of inhabitants of an Urban District, the Local Government Board may by order adjust the contribution to be made by the Urban Council (42 & 43 Viet. c. 54, s. 14).

To meet a temporary want District Councils are empowered, with the sanction of the Local Government

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<sup>1</sup> See *Guardians of West Ham v. Pearson*, 1890, 62 L.T. 638.

Board, to provide medicine and medical assistance for poor inhabitants (section 133, P.H. Act, 1875).

To check infectious disease the Council are empowered, on the certificate of their Medical Officer, to cause premises to be cleansed and disinfected by the owner or occupier, and in their default to do the cleaning and recover the expense by summary proceedings. Bedding and other articles which have been exposed to dangerous infectious disorders may be disinfected free of charge or destroyed, and compensation may be given for the same (sections 120, 121, 122, P.H. Act, 1875). Ambulances for the conveyance of infected persons to hospital may be provided, and their removal to hospital may be enforced by order of a Justice where necessary to prevent the spread of infection.

This important power is contained in section 124, P.H. Act, 1875 :—

“Section 124. Where any suitable hospital or place for the reception of the sick is provided within the district of a Local Authority, or within a convenient distance of such district, any person who is suffering from any dangerous infectious disorder, and is without proper lodging or accommodation, or lodged in a room occupied by more than one family or is on board any ship or vessel may, on a certificate signed by a legally qualified medical practitioner, and with the consent of the superintending body of such hospital or place, be removed by order of any Justice, to such hospital or place at the cost of the Local Authority ; and any person so suffering, who is lodged in any common lodging-house, may, with the like consent and on a like certificate, be so removed by order of the Local Authority.

“An order under this section may be addressed to such constable or officer of the Local Authority as the Justice or

Local Authority making the same may think expedient ; and any person who wilfully disobeys or obstructs the execution of such order shall be liable to a penalty not exceeding ten pounds."

An order may be made for removal to any hospital or infirmary which the Justices deem within a convenient distance and suitable. On an application for the removal of an infected person the Justice must take into consideration not only whether the infected person is without proper lodging or accommodation, but also whether under the circumstances such person is a source of danger and infection to others. In *Warwick v. Graham*,<sup>1</sup> an infected person placed in the parlour of a four-roomed house was deemed to be without proper lodging. Where a person is charged with obstructing the execution of such an order for removal the Justices who hear the charge cannot question its validity.<sup>2</sup>

Penalties are imposed on persons who fail to disinfect vehicles used by the public or who let houses in which infected persons have been lodging (P.H. Act, 1875, sections 127-9) ; and for the wilful exposure in public places of infected persons and things. A penalty of 5*l.* may be imposed on any person who—

"Section 126.—(1.) While suffering from any dangerous infectious disorder wilfully exposes himself without proper precautions against spreading the said disorder in any street,

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<sup>1</sup> 1899, 63 J.P. 599.

<sup>2</sup> *Q. v. Davey*, 1899, 15 T.L.R. 341.

public place, shop, inn, or public conveyance, or enters any public conveyance without previously notifying to the owner, conductor, or driver thereof that he is so suffering; or

“(2.) Being in charge of any person so suffering, so exposes such sufferer; or

“(3.) Gives, lends, sells, transmits, or exposes, without previous disinfection, any bedding, clothing, rags, or other things which have been exposed to infection from any such disorder.”

A person who knowingly takes his family who are recovering from an infectious disease to lodgings, without communicating the fact, and thereby the lodging-house keepers are infected with the disease, is responsible for the loss so caused.<sup>2</sup>

A medical man sent a patient who was suffering from scarlet fever to the fever hospital with a certificate, directing him to walk in the middle of the road and not to talk to any one but in consequence of an alleged informality in the certificate, the patient was refused admission, whereupon the medical man walked with him through the streets of the town to the residence of the chairman of the local board, from whom, after some delay, he obtained an order for the man's admission, to the hospital. He then returned with the patient to the police station to procure the ambulance to convey him thither. On an information against the medical man under this subsection, the

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<sup>1</sup> A shop is a place where things are sold to the public and into which the public are invited to come to buy. An inn is defined to be a house in which travellers, passengers, wayfaring men, and other such like casual guests, are accommodated with lodgings, and whatsoever they reasonably desire for themselves and their horses while on their way. A public conveyance is one which plies in public places to carry passengers for hire.

<sup>2</sup> *Best v. Stapp*, 1877, 2 C.P.D. 191 n, “The Times,” 9th November 1872.

Justices were of opinion that it was not proved before them that the medical man "had charge of" the patient, that he had not wilfully exposed the patient in any street or public place "without proper precaution," and that he had made the best use of the means at his disposal to prevent the spread of the fever and they refused to convict him. It was held that the Justices were right.<sup>1</sup>

The District Council are empowered to provide mortuaries or places for the reception of dead bodies before interment, and to make byelaws regulating their management. Where the body of one who has died of an infectious disease is retained in a room used as a dwelling-place or workroom any Justice may, on the certificate of a medical practitioner, order its removal to the district mortuary, and to direct it to be buried within a time limited. Persons who obstruct the execution of such order are liable to a penalty of 5*l.* (sections 141, 142, P.H. Act, 1875), and if the relations of the deceased do not undertake to bury the body, the relieving officer must so do, and may recover, from the person legally liable to pay the expense of such burial, the expense so incurred.

District Councils can more effectually check the spread of infectious diseases by adopting the Infectious Disease (Prevention) Act, 1890. The whole Act may be adopted or any section of it, and such adoption may be rescinded at any time.

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<sup>1</sup> Tunbridge Wells L.B. v. Bishopp, 1877, 2 C.P.D. 187.



This Act provides for the inspection of dairies and other places from which milk is supplied ; for the cleansing and disinfecting of houses and of bedding ; for the burial of dead bodies ; for the destruction of infected rubbish ; and for the disinfection of conveyances used for carrying corpses.

Section 12 of the Act confers the useful power to detain in hospital, at the cost of the District Council, any person suffering from any infectious disease who will not on leaving the hospital be provided with lodging in which proper precautions can be taken to prevent the spread of disease.

The Public Health (Ships) Act, 1885, brings vessels which are in waters within the district under the control of the Council for the purpose of enforcing the provisions of the Public Health Acts relating to infectious diseases and hospitals. The ship is deemed to be a house, and the master or other officer in charge the occupier.

The form of certificate prescribed under section 4 of the Notification Act, 1889, is :—

[*insert name of district.*]

“To the Medical Officer of Health.

“I hereby certify and declare that in my opinion [*name in full of patient*] an inmate of [*description of house and street where patient is resident*] is suffering from [*name of disease*].

“Dated the                      day of                      1900.

“Signed

“Medical Practitioner.”

The certificate must be sent to the Medical Officer forthwith by a medical practitioner who is called in to



attend on or to visit a patient suffering from small-pox, cholera, diphtheria, membranous croup, erysipelas, scarlatina, or scarlet fever, and the fevers known as typhus, typhoid, enteric, relapsing, continued, or puerperal. A doctor is entitled to be paid by the District Council a fee of 2*s.* 6*d.* for each certificate duly sent in where the case occurs in his private practice and 1*s.* if the case occurs in his practice as Medical Officer of any public body or institution, Infectious D.N. Act, 1889, section 4 (2) ; a friendly society or medical club is not a public hospital. The receipt of these fees does not disqualify any medical practitioner for the office of District Councillor (Infectious D.N. Act, section 11).

The Isolation Hospitals Act, 1901, 1 E. VII. c. 8., empowers District Councils to transfer hospitals to the County Council for use as isolation hospitals and County Councils are empowered to contribute towards any hospital provided by a District Council. The Rural Council is the hospital authority in the case of any contributory place, but the Parish Council retain a right of appeal to the L. G. Board.



## CHAPTER 12.

## UN SOUND FOOD.

The supervision of the sale of food which is intended for the use of man rests with the Medical Officer of Health and Inspector of Nuisances. They may seize unsound food and carry it before a Justice to be condemned by him, wherever he may be, at home, in the street, or in court. The eye and nose are safe tests of the unsound state of food. A Justice is not entitled, before condemning and ordering the destruction of food, to consider whether it was intended for the food of man, or was sold or exposed for sale or deposited in any place for the purpose of sale.<sup>1</sup> It is not until a summons is issued against the person to whom the unsound food belonged that the Justice has to consider whether the food was intended for the use of man.

The provisions of the Public Health Acts relating to the sale of unsound food apply to Urban and Rural Districts, and the inspection and seizure may be on

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<sup>1</sup> *Thomas v. Van Os*, 1900, 69 L.J., Q.B. 665.

any day of the week. Tradesmen who reside in the suburbs must have an eye to the shop. The Inspector may call on a Sunday<sup>1</sup>.

The enforcement of the provisions of the Public Health Act, 1875, sections 116 to 119, is at the instance of public officers ; this restriction is removed where Part III., Public Health Act, 1890, is in force. That Act enables any person to make the application to a Justice to condemn unsound food without any seizure by an officer of the Council.

Section 116, P.H. Act, 1875, is as follows :—

“Any Medical Officer of Health or Inspector of Nuisances may at all reasonable times inspect and examine any animal, carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, flour, or milk exposed for sale, or deposited in any place for the purpose of sale, or of preparation for sale, and intended for the food of man, the proof that the same was not exposed or deposited for any such purpose, or was not intended for the food of man, resting with the party charged ; and if any such animal, carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, flour, or milk appears to such Medical Officer or Inspector to be diseased or unsound, or unwholesome or unfit for the food of man, he may seize and carry away the same himself or by an assistant, in order to have the same dealt with by a Justice.”

The seizure may be in any sort of premises where the food is deposited, in a yard<sup>2</sup> but not in the street through which it is being conveyed, and in which there is not an exposure for sale. In a market or fair there may be a deposit without an exposure. By

<sup>1</sup> *Small v. Bickley*, 1875, 32 L.T. 726.

<sup>2</sup> *Young v. Grattridge*, 1868, L.R., 4 Q.B. 166.

section 15, Markets and Fairs Clauses Act, 1847, those who sell or expose for sale unwholesome provisions in a market or fair are liable to a penalty of 5*l*.

Condemnation of unsound food follows wherever it is found deposited for purpose of sale or preparation for sale or intended for the use of man. But the punishment of the offence under section 117, Public Health Act, 1875, attaches to the exposure for sale.

Section 117 is as follows :—

“ 117. If it appears to the Justice that any animal, carcase, meat, poultry, game, flesh, fruit, vegetables, corn, bread, flour, or milk so seized is diseased, or unsound, or unwholesome, or unfit for the food of man, he shall condemn the same, and order it to be destroyed or so disposed of so as to prevent it from being exposed for sale or used for the food of man; and the person to whom the same belongs or did belong at the time of exposure for sale, or in whose possession or on whose premises the same was found, shall be liable to a penalty not exceeding twenty pounds for every animal, carcase, or fish, or piece of meat, flesh, or fish, or any poultry or game, or for the parcel of fruit, vegetables, corn, bread, or flour, or for the milk so condemned, or, at the discretion of the Justice, without the option of a fine, to imprisonment for a term of not more than three months.

“The Justice who, under this section, is empowered to convict the offender may be either the Justice who may have ordered the article to be disposed of or destroyed, or any other Justice having jurisdiction in the place.”

In *Mallinson v. Carr*<sup>1</sup> a butcher was convicted for having in his possession unsound meat for the purpose

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<sup>1</sup> 1891, 1 Q.B. 48.

of preparation for sale, and intended for the food of man, was supported although there was no exposure for sale ; but the Aet does not reach the mere possession of unsound food ; hence where an employer who had unsound meat on his premises intending it for home consumption by his family and servants the High Court quashed the conviction<sup>1</sup>. Exposure for sale is the offence to which the penalty attaches. Where a farmer knowingly sent unsound meat to a London market, and the salesman, as soon as he saw the meat, put it aside, the High Court held that the farmer could not be convicted because there was no exposure for sale.<sup>2</sup> And there might be a sale without any exposure for sale where food is sold pursuant to contract implied by a course of dealing between parties, *e.g.*, by delivery to a regular customer.<sup>3</sup>

The latter omission in the Aet of 1875 is remedied where the Public Health Amendment Aet, 1890, is in force.

“By section 28, Public Health Acts Amendment Act, 1890, sections 116-119 are extended to any articles intended for the food of man sold or exposed for sale, or deposited in any place for the purpose of sale or of preparation for sale within the district of the Council ; and the condemnation of the food by a Justice may be made on the application of any person without any seizure having been made by an officer of the Council.”

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<sup>1</sup> *Rendall v. Hemmingway*, 1898, 14 T.L.R. 456.

<sup>2</sup> *Barlow v. Terrett*, 1891, 2 Q.B. 109.

<sup>3</sup> *White v. M. of Yeovil*, 1892, 61 L.J. 213.

If no summary proceedings are taken after condemnation of food by a Justice the facts may be opened before an arbitrator appointed to settle a claim for compensation pursuant to section 308, Public Health Act, 1875. The taxed costs of proceedings which fail may be recovered as damages in addition to the value of the meat destroyed, and where expenses have been incurred in order to resist the condemnation of food, and a Justice has refused to condemn, such costs will support a claim for compensation.<sup>1</sup> Those who hinder public officers from entering premises for the purpose of inspecting food are subject to a penalty of 5*l*. A person who is on premises and verbally refuses to permit the officers to enter is liable to a penalty, but a tradesman who resided half a mile distant from his shop and refused to come on Sunday to open it does not commit the offence of hindering an inspection.<sup>2</sup> Where a complaint on oath is made that unsound food is concealed any Justice may grant a search warrant to seize it (sections 118, 119, P.H. Act, 1875).

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<sup>1</sup> *Walshaw v. M. of Bridghouse*, 1899, 2 Q.B. 286; *Bater v. M. of Birkenhead*, 1893, 2 Q.B. 77.

<sup>2</sup> *Small v. Bickley*, 1875, 32 L.T. 726.



## CHAPTER 13.

## DAIRIES.

*Orders and Regulations—Inspection of Premises—  
Infectious Disease—Registration—Purveyors of  
Milk—Shops—Farmers—Tuberculosis.*

The Contagious Diseases (Animals) Act, 1878, section 34, and the Amending Act of 1886, empowers the Local Government Board from time to time to make such general or special Orders as they think fit for the following purposes, or any of them:—

- “(i.) For the registration with the Local Authority of all persons carrying on the trade of cowkeepers, dairymen, or purveyors of milk.
- “(ii.) For the inspection of cattle in dairies, and for prescribing and regulating the lighting, ventilation, cleansing, drainage, and water supply of dairies and cow-sheds in the occupation of persons following the trade of cowkeepers or dairymen.
- “(iii.) For securing the cleanliness of milk-stores, milk-shops, and of milk vessels used for containing milk for sale by such persons.
- “(iv.) For prescribing precautions to be taken for protecting milk against infection or contamination.
- “(v.) For authorising a Local Authority to make regulations for the purposes aforesaid, or any of them, subject to such conditions, if any, as the Local Government Board may prescribe.”

The Orders made by the Board have the same effect as if contained in the Acts, and while they remain in force it is not competent to question their authority.<sup>1</sup>

For the purpose of enforcing Orders of the Board or any regulations made pursuant thereto, the Local Authority and their officers have the same right to be admitted to any premises as under section 102, Public Health Act, 1875, for the purpose of examining as to the existence of any nuisance, and a refusal to admit to premises entails similar consequences (Order, 1866 (4)). Penalties imposed are to be recovered in a summary manner as in the case of offences against byelaws, and expenses incurred fall on the district. No provision is made for the appointment of an officer for the express purpose of executing the Orders and Regulations, but District Councils can appoint officers under the Public Health Act, 1875, and assign to them such duty, and Rural Councils are empowered by section 190, Public Health Act, 1875, to appoint more than one Inspector of Nuisances.

Under section 102, Public Health Act, 1875, entry into premises for the purpose of examining as to the existence of any nuisance thereon may be made at any time between 9 a.m. and 6 p.m. or at any hour when business is usually carried on. The order of a

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<sup>1</sup> *Baker v. Williams*, 1898, 1 Q.B. 23.



Justice, made on complaint on oath by an officer, requiring any person to admit such officer to premises may be enforced by a penalty of 5*l*.

The power to enter premises for the purpose of inspection can only be exercised within the district for which the officer is appointed ; but adjoining districts can jointly appoint an officer for this purpose.

If infectious disease is attributed by a Medical Officer of Health to milk supplied within a district from any dairy situate within or without the district, section 4 of the Infectious Disease (Prevention) Act, 1890, where in force, enables a District Council to prohibit the supply of milk from such dairy. Section 4 is as follows :—

“4. In case the Medical Officer of Health is in possession of evidence that any person in the district is suffering from infectious disease attributable to milk supplied within the district from any dairy situate within or without the district, or that the consumption of milk from such dairy is likely to cause infectious disease to any person residing in the district, such Medical Officer shall, if authorised in that behalf by an order of a Justice having jurisdiction in the place where such dairy is situate, have power to inspect such dairy, and if accompanied by a veterinary inspector or some other properly qualified veterinary surgeon to inspect the animals therein, and, if on such inspection the Medical Officer of Health shall be of opinion that infectious disease is caused from consumption of the milk supplied therefrom, he shall report thereon to the Local Authority, and his report shall be accompanied by any report furnished to him by the said veterinary inspector or veterinary surgeon, and the Local Authority may thereupon

give notice to the dairyman to appear before them within such time, not less than 24 hours, as may be specified in the notice, to show cause why an order should not be made requiring him not to supply any milk therefrom within the district until such order has been withdrawn by the Local Authority, and if, in the opinion of the Local Authority he fails to show such cause, then the Local Authority may make such order as aforesaid, and the Local Authority shall forthwith give notice of the facts to the Sanitary Authority and County Council (if any) of the district or county in which such dairy is situate, and also to the Local Government Board. An order made by a Local Authority in pursuance of this section shall be forthwith withdrawn on the Local Authority or the Medical Officer of Health, on its behalf, being satisfied that the milk supply has been changed or that the cause of the infection has been removed. Any person refusing to permit the Medical Officer of Health on the production of such order as aforesaid to inspect any dairy, or if so accompanied as aforesaid, to inspect the animals kept there, or after any such order not to supply milk as aforesaid has been given, supplying any milk within the district in contravention of such order, or selling it for consumption therein, shall be deemed guilty of an offence against this Act. Provided always, that proceedings in respect of such offence shall be taken before the Justices of the Peace having jurisdiction in the place where the said dairy is situate. Provided also, that no dairyman shall be liable to an action for breach of contract if the breach be due to an order from the Local Authority under this Act."

### *Registration.*

Persons may keep cows and have a dairy without carrying on a business as a cowkeeper or a dairyman. A farmer who owns cows and uses his dairy for

rearing calves is exempt from registration<sup>1</sup>; so is a farmer who keeps cows for his own use and supplies a few quarts of milk to dairymen.<sup>2</sup> The term purveyor of milk embraces every person who trades in milk, from a shop or from a vehicle. New dairies and cowsheds cannot be occupied without first giving a month's notice to the District Council, so there is ample time for their officers to enforce adherence to the regulation. The regulations do not require a specific confirmation of the Local Government Board, but the Board can disallow them. The practice is to submit a draft before the regulations are issued. The Model Regulations are not specific enough about the lighting and flooring of cowsheds. Impervious and unjointed materials are necessary to avoid penetration of urine into the floors.

It should be noted that by the D.C. and M. Order of 1899, Article 15 of the Order of 1885, is altered, so that for the purposes of the provisions of paragraphs (a) and (b) thereof, the expressions in that article which refer to disease shall include, in the case of a cow, such disease of the udder as shall be certified by a veterinary surgeon to be tubercular.

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<sup>1</sup> *Umfreville v. L.C.C.*, 1896, 75 L.T. 555.

<sup>2</sup> *Southend v. Lewis*, 1880, 45 J.P. 206.



## CHAPTER 14.

OPEN SPACES—PARKS AND PLEASURE  
GROUNDS.

*The various Acts relating to them—Town Gardens  
—Commons—Open Spaces Acts—Disused  
Burial Grounds—The Public Health Acts—  
Byclaws—Closing—Charges for Admission—  
Pleasure Boats—Rating Open Spaces.*

It is not easy to condense the Acts in force relating to public pleasure grounds and open spaces. The Towns Improvement Clauses Act, 1847 (10 & 11 Viet. c. 34, s. 135) authorised the acquisition of sites for places of public resort and recreation within three miles of the market place of a town, and the Recreation Grounds Act, 1859 (22 Viet. c. 27) empowered (1) the grant or conveyance of any lands to be held as open public grounds for the resort and recreation of adults and as playgrounds for children and youths, (2) the bequest of money not exceeding 1,000*l.* to defray expenses of purchase or maintenance of such ground. The Public Improvements Act,

1860, sanctions the acquisition by the ratepayers of a parish of land for forming a public walk or playground, or for improving any open walk or footpath, or placing seats or shelter from rain, provided half the cost is raised by donation (23 & 24 Vict. c. 30. This Act is adoptive in parishes with 500 inhabitants). And the Town Gardens Protection Act, 1863, empowered the Town Council in cities and boroughs to take charge of neglected gardens and ornamental grounds where the trustees or commissioners appointed for the care of the same have failed to keep them in proper order.

Distinct from grounds provided under these Acts are allotments for recreation set out under an award made under the Inclosure Acts, and ordinarily vested in the parish officers. In Rural Parishes these are transferred to the Parish Council, but Urban District Councils are not concerned with them unless they are vested with the powers of a Parish Council in that respect pursuant to an order of the Local Government Board (section 33, L.G. Act, 1894). And public interest in "commons" are regulated by a separate set of Acts, the Commons Acts, 1876 to 1899, under the last of which any District Council may regulate a common within their district by a scheme approved by the Board of Agriculture; and armed with the consent of the County Council they make, institute, or aid legal proceedings for the purpose of maintaining rights on commons where the extension of such

rights would be prejudicial to the inhabitants of the district (L.G. Act, 1894, section 26 (2)).

The Open Spaces Acts, 1887-1890, extend the provisions of the Metropolitan Open Spaces Acts, 1877-1881, to England (O.S. Act, 1887, section 6 ; Common Act, 1899, section 17). "Open space" means any land, whether inclosed or uninclosed, of which a twentieth part is not built on, and which is laid out as a garden, or is used for purposes of recreation, or lies waste and unoccupied (section 7, O.S. Act, 1890). It may be outside the Urban District (*ib.* section 6). Expenses incurred under these Acts in Rural Districts are defrayed as special expenses, in Urban Districts as general expenses (O.S. Act, 1887, section 8).

Byelaws may be made regulating the days and times of admission, preservation of order, and the prevention of nuisances. Penalties may be imposed, and officers of the Council are authorised to remove offenders. Districts can carry out these Acts jointly.

Corporate bodies may make gifts of land to District Councils for the purpose of being preserved as an open space for the enjoyment of the public (section 7, O.S. Act, 1887); and Trustees or other managing body of open spaces and gardens, may transfer their powers to District Councils (section 2, Met. O.S. Act, 1881), this applies to gardens which are used in common by the residents in squares. After the transfer the residents are relieved from any special rate imposed in respect of such gardens.

Disused burial grounds may be transferred to District Councils where such grounds have or have not been closed for burials under an Act or Order in Council (section 4, O.S. Act, 1887), but no building of any kind, temporary or movable, is to be erected upon any disused burial ground, except for enlarging a place of worship (Disused Burial Grounds Act, 1884, 47 & 48 Vict. c. 72), and the playing of any games or sports is not to be allowed in any churchyard, cemetery, or burial ground in or over which any estate, interest, or control is acquired under section 5 of the Metropolitan Open Spaces Act, 1881 ; unless

“(a.) In the case of consecrated ground, the bishop, by any licence or faculty granted under the Metropolitan Open Spaces Act or this Act, and

“(b.) In the case of any churchyard, cemetery, or burial ground which is not consecrated, the body from which any such estate, interest, or control as aforesaid is acquired

may expressly sanction any such use of the ground, and may specify any conditions as to the extent or manner of such use.”

The removal of tombstones and monuments must be sanctioned by a faculty and public notification under the Public Health Acts.

Section 164, Public Health Act, 1875, is as follows :—

“Any Urban Authority may purchase or take on lease, lay out, plant, improve, and maintain lands for the purpose of being used as public walks or pleasure grounds, and may support or contribute to the support of public walks or pleasure grounds provided by any person whomsoever.

"Any Urban Authority may make byelaws for the regulation of any such public walk or pleasure ground, and may by such byelaws provide for the removal from such public walk or pleasure ground of any person infringing any such byelaw by any officer of the Urban Authority or constable."

The park may be within or without the Urban District. Surplus land instead of being sold may be appropriated as an open space (section 7, O.S. Act, 1887).

Byelaws may set apart portions of the park for games, and may prohibit them on Sunday; and public preaching and the holding of public meetings may be forbidden.

Section 44, Public Health Acts Amendment Act, 1890, enables the Council to enclose a park and to authorise charges to be made for admission.

"44.—(1.) An Urban Authority may on such days as they think fit (not exceeding twelve days in any one year, nor four consecutive days on any one occasion) close to the public any park or pleasure ground provided by them, or any part thereof, and may grant the use of the same, either gratuitously or for payment, to any public charity or institution, or for any agricultural, horticultural, or other show, or any other public purpose, or may use the same for any such show or purpose; and the admission to the said park or pleasure ground, or such part thereof, on the days when the same shall be so closed to the public, may be either with or without payment, as directed by the Urban Authority, or, with the consent of the Urban Authority, by the society or persons to whom the use of the park or pleasure ground, or such part thereof, may be granted: Provided that no such park or pleasure ground shall be closed on any Sunday or public holiday.



“(2.) An Urban Authority may either themselves provide and let for hire, or may licence any person to let for hire, any pleasure boats on any lake or piece of water in any such park or pleasure ground, and may make byelaws for regulating the numbering and naming of such boats, the number of persons to be carried therein, the boat-houses and mooring places for the same, and for fixing rates of hire and the qualifications of boatmen, and for securing their good and orderly conduct while in charge of any boat.”

This last paragraph is an extension of section 172, Public Health Act, 1875, which does not authorise an Urban Authority to provide and let boats. Section 172 empowers an Urban District Council to licence the owners of and boatmen in charge of pleasure boats and vessels.

Byelaws fixing rates of hire and the qualification of boatmen may be made for licenced boats, but the use of unlicenced boats cannot be controlled.<sup>1</sup>

Public authorities who hold public parks and open spaces as trustees for the use of the public are not rateable as occupiers, for the reason that the statutory restrictions denude the occupancy of all profitable use.<sup>2</sup> Open spaces are, in fact, unprofitable, so there is nothing to support an assessment, but if such places were let, the occupancy might be beneficial, hence public authorities are chargeable to private street expenses as owners.<sup>3</sup>

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<sup>1</sup> *Byrne v. Brown*, 1893, 57 J.P. 741.

<sup>2</sup> *Os. of Lambeth v. L.C.C.*, 1897, A. 625.

<sup>3</sup> *Fulham Vestry v. Minter*, 1901, 1 K.B. 501.



## CHAPTER 15.

## PUBLIC LIBRARIES ACTS, 1892-1901.

Every rural parish in England and every Urban District is a Library District for the purpose of the adoption of the Public Libraries Act, 1892. In Urban Districts the Act is adopted by a resolution passed by a majority of the Council (56 Viet. c. 11), in a rural parish by the vote of the parish meeting pursuant to the Local Government Act, 1894.

A rate or addition to a rate cannot be levied for the purposes of these Acts during one year to an amount exceeding one penny in the pound.

In a rural parish the Parish Council are the library authority, and if no Parish Council the parish meeting may be invested with the power of executing the Public Libraries Acts, 1892 to 1901.<sup>1</sup> Urban District Councils can combine to provide a library for the joint use of their districts and delegate their powers to a joint committee of councillors or other persons. The members of the Committee are appointed by the combining councils in such proportions as may be agreed on, but need not be members of any of the councils.<sup>2</sup> The expenses are defrayed as may be agreed on out of the general district rate.

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<sup>1</sup> L.G. Act, 1894, section 19 (10).

<sup>2</sup> P.L. Act, 1893, section 4.

Parish Councils, can in like manner combine. The demand note of the overseers is to show the amount levied for purposes of these Acts. Separate accounts of receipts and expenditure are to be kept,<sup>1</sup> and audited in the usual manner. Library authorities are empowered to provide public museums, schools of science, art galleries and schools of art, to manage them and to provide therein books, newspapers, maps and specimens of art and science.<sup>2</sup> No charge can be made for admission to a library or museum provided under the Public Libraries Act, or in the case of a lending library for the use thereof by the inhabitants of the library district, but the use of a lending library to persons, not inhabitants, may be permitted either gratuitously or for payment.<sup>3</sup> Officers may be appointed and regulations for the safety, use of, and admission of the public to the library or museum, &c. By the Libraries Offences Act, 1898, persons are subject to a penalty of 40s., who behave in a disorderly manner, use violent, abusive, or obscene, language, bet or gamble, or after warning persist in remaining in a public library or reading room beyond the closing hour.<sup>4</sup>

The Museums and Gymnasiums Act, 1891, is adoptive. It empowers an Urban District Council to provide and maintain museums for the reception of local antiquities and other objects of interest, and gymnasiums with all the apparatus ordinarily

<sup>1</sup> P.L. Act, 1892, sec. 20.

<sup>2</sup> Section 15 (1) P.L. Act, 1892.

<sup>3</sup> *Ib.* section 11 (3).

<sup>4</sup> 61 & 62 Vict. c. 53.

used therewith, and to erect any buildings and do all things necessary for the provision and maintenance of such museums, and gymnasiums.<sup>1</sup> Seven years after the establishment of a museum or gymnasium which becomes unnecessary or too expensive, it may be sold, with the consent of the L.G. Board. This Act does not refer to the acquisition of a collection of objects of art or science for the museum. Where such have been given they would probably go to auction when a museum is abolished. To avoid the scattering of a collection they may be vested in the District Council and trustees for the benefit of the inhabitants.

By the Public Libraries Act, 1901, 1 E. VII., c. 19, persons are qualified for commissioners of a library district who would in a rural parish be qualified for election as parish councillors, and the like disqualifications attach to them. The library authority may make byelaws, and where the district is a parish the precept for expenses may be directed to the overseers without sanction of the vestry, but the parish meeting are to sanction the expenditure in every tenth year. Expenses of repairing damage caused by subsidence in urban districts are not to be included in the penny rate. The library authority is to be elected by parochial electors. Museums provided under the Libraries Acts may be appropriated for the purposes of the Gymnasiums Act, 1891.

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<sup>1</sup> 54 & 55 Vict. c. 22, s. 4.

## CHAPTER 16.

## SCHOOLS.

*The Board of Education—The School Attendance Committee—The Elementary Education Act, 1900.*

The "Board of Education" has supplanted "the Lords of the Committee of the Privy Council on Education," who constituted the "Education Department" and the Department of Science and Art. The Board, which consists of a President and of the Lord President of the Council, the Principal Secretaries of State, the First Commissioner of the Treasury, and the Chancellor of the Exchequer, is now the supreme authority for the purpose of enforcing the Elementary Education Acts, 1870-1900. The Board of Education Act, 1899 (62 & 63 Vict. c. 33), empowers the Queen in Council, by Order to transfer to the Board any powers of the Charity Commissioners or of the Board of Agriculture which relate to education, and provides for the establishing of a Consultative Committee to advise relating to the inspection of secondary schools and to the framing of regulations for a register of teachers.

The Elementary Education Act, 1876, section 33, empowers an Urban District Council, with a population exceeding 5,000, by authority of the Board of Education, to appoint a School Attendance Committee where their district is co-extensive with one or more parishes, and not under the control of a School Board. Section 33 of the Elementary Education Act, 1876, is as follows :—

“On the application of a District Council of an Urban District which is not and does not comprise a Borough, and which is co-extensive with any parish or parishes not within the jurisdiction of a School Board, containing, according to the last published census for the time being, a population of not less than five thousand, the Board of Education may, by order, authorise the Council of that district to appoint, and thereupon such authority may appoint, a School Attendance Committee, as if they were the Council of a Borough, and that committee, to the exclusion of the School Attendance Committee appointed by the Guardians, shall enforce the provisions of this Act in the Urban District, and be in that district the Local Authority for the purposes of this Act, and all the provisions of this Act shall apply accordingly as if the District Council were the Council of a Borough.

“Provided that the expenses (if any) of a School Attendance Committee appointed by an Urban District Council shall be paid out of a fund to be raised out of the poor rate of the parish or parishes comprised in the district of such Authority, according to the rateable value of each parish, and the Urban District Council shall, for the purpose of obtaining payment of such expenses, have the same power as a Board of Guardians have for the purpose of obtaining contributions to their common fund under the Acts relating to the relief of the poor, and the accounts of such expenses shall be audited as the accounts of other expenses of the Sanitary Authority.

"Any byelaws in force in an Urban District, or any part thereof, before the appointment of a School Attendance Committee by the District Council of such district, shall continue in force, subject, nevertheless, to be revoked or altered by the School Attendance Committee of the District Council in pursuance of section 74 of the Elementary Education Act, 1870 as amended by this Act.

"Where an Urban District is not and does not comprise a borough, and is not wholly within the jurisdiction of a School Board, and is not within the foregoing provisions of this section, the Urban District Council of that district may from time to time appoint such number as the Board of Education allow, not exceeding those of their own members to be members of the School Attendance Committee for the union in which the district or the part thereof not within the jurisdiction of a School Board is situate and such members, so long as they are members of the District Council, and their appointment is not revoked by that Authority, shall be members of the School Attendance Committee, and have the same powers and authorities as if they had been appointed by the Guardians.

"Where a School Board is appointed after the commencement of this Act for any parish which forms or comprises the whole or part of an Urban District in which the School Attendance Committee is appointed by the Urban District Council, such School Attendance Committee shall, at the expiration of two months after the election of the School Board, cease to act for the Urban District, and the School Attendance Committee appointed by the Guardians shall be the Local Authority for so much of the Urban District as is not under the School Board.

"All byelaws in force at the expiration of the said two months shall continue in force, subject to being revoked or altered by the Local Authority, in pursuance of section 74 of the Elementary Education Act, 1870, as amended by this Act."



Byelaws provide for the attendance of children, the standard of exemption, and for penalties. Home lessons are not a part of the education provided for under the Elementary Education Acts, so boys cannot be detained after school time for neglecting them.<sup>1</sup> Correction by caning on the hand is not illegal,<sup>2</sup> and may be used to correct offences in school or out of it, and on or off the school premises.<sup>3</sup>

The Education Code, 1866, section 98, empowers District Councils to make an order for closing a Board school where disease prevails among the children attending. Loss of fees during operation of a closing order does not entitle the masters to compensation from the Council.<sup>4</sup>

The School Attendance Committee is not a rating authority. Within 30 days after audit of accounts, a statement of the receipts and payments is sent to the Overseers, and if there is a deficiency the District Council address a precept to the Overseers, who cannot excuse disobedience by alleging that mismanagement has caused the deficiency. That objection may be taken at the audit of accounts. The High Court will grant a writ of mandamus commanding the Overseers to discharge the precept by payment or to levy a rate to meet it.<sup>5</sup>

<sup>1</sup> *Hunter v. Johnson*, 1884, 13 Q.B.D. 225.

<sup>2</sup> *Gardner v. Bygrave*, 1889, 53 J.P. 743.

<sup>3</sup> *Cleary v. Booth*, 1893, 1 Q.B. 465.

<sup>4</sup> *Roberts v. Falmouth S.A.*, 1888, 52 J.P. 741.

<sup>5</sup> *Gribthorpe S.B. v. G. Ovsrs.*, 1883, 47 J.P. 727.



The Blind and Deaf Children Act, 1893 (56 & 57 Viet. c. 42), cast on an Urban District Council the duty to provide for the elementary education of blind and deaf children residing within the district ; the Defective and Epileptic Children Act, 1899 (62 & 63 Viet. c. 32), empowers an Urban Authority to provide for education of defective and epileptic children, and the Elementary Education Act, 1900 (63 & 64 Viet. c. 53), empowers the District Council to defray expenses of and incidental to the conveyance of children committed to a certified industrial school, and to contribute to the ultimate disposal of such children. Where a parish within an urban district is under a School Board it is exempt from contributing to the expenses incurred by the District Council for the purposes of the Act of 1893 ; and such expenses are raised as general expenses within the area for which the Council act as school authority, but if the Council are school authority for the whole urban district the expenses incurred about blind and deaf, defective and epileptic children will be raised as general expenses of the urban district.



CHAPTER 17.

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PUBLIC BATHS, WASH-HOUSES, AND  
BATHING-PLACES.

The Baths and Wash-houses Acts, 1846 to 1899, are adoptive. Urban District Councils are empowered to adopt these Acts by section 10, Public Health Act, 1875. In a rural parish the adoption is by vote of the parish meeting, and the Parish Council apply the powers of the Acts (section 7, L.G. Act, 1894). Ten ratepayers can requisition the Parish Council to convene a parish meeting to determine whether the Acts are to be adopted. The resolution to adopt must be carried by a majority of two-thirds of the parish meeting or of a poll of the parochial electors.

Where a District Council and a Parish Council have joint interests under these Acts they can appoint a joint committee to manage (section 57, L.G. Act, 1894). The expenses are defrayed out of the General District Rate in Urban Districts and out of the Poor Rate in a Rural Parish, the demand note showing the amount levied for purposes of the Acts (*ib.*, section 11 (5)).

Existing baths and wash-houses may be purchased, and also lands for the purpose of erecting buildings and making open bathing places and covered swimming baths and gymnasia either within the district or parish or in the immediate neighbourhood thereof (sections 24 and 25, B. and W. Act, 1846 ; section 3, B. and W. Act, 1878 ; section 3, B. and W. Act, 1882). Byelaws may be made for regulating the use of baths, wash-houses, and bathing places. The payment of charges made for use of wash-houses may be enforced by detention and sale of clothes brought to be washed. Twice as many baths and wash-tubs are to be provided for the use of the labouring classes as are provided for other classes (section 36, B. and W. Act, 1846).

The charges may be as follows, according to the Schedules to the Acts of 1847 and 1879.

#### " 1. BATHS FOR THE LABOURING CLASSES.

" Every bath to be supplied with clean water for every person bathing alone, or for several children bathing together, and in either case with one clean towel for every bather.

" For one person above eight years old :

" Cold bath, or cold shower-bath, any  
sum not exceeding - - - One Penny.

" Warm bath or warm shower-bath, or  
vapour bath, any sum not exceeding Two-pence.

" For several children, not above eight years old, nor exceeding four, bathing together :

" Cold bath, or cold shower-bath, any  
sum not exceeding - - - Two-pence.

" Warm bath, or warm shower-bath, or  
vapour bath, any sum not exceeding Four-pence.

## "2. BATHS OF ANY HIGHER CLASS.

"Such charges as the Council and the Commissioners respectively think fit, not exceeding in any case three times the charges above mentioned for the several kinds of baths for the labouring classes.

## "3. WASH-HOUSES FOR THE LABOURING CLASSES.

"Every wash-house to be supplied with conveniences for washing and drying clothes and other articles.

"For the use by one person of one washing tub or trough, and of a copper or boiler (if any), or where one of the washing tubs or troughs shall be used as a copper or boiler, for the use of one pair of washing tubs or troughs, and for the use of the conveniences for drying :

"For one hour only in any one day  
any sum not exceeding - - - One Penny.

"For two hours together in any one  
day, any sum not exceeding - - - Three-pence.

"Any time over the hour or two hours respectively, if not exceeding five minutes, not to be reckoned.

"For two hours not together, or for more than two hours in any one day, such charges as the Council and Commissioners respectively think fit.

"For the use of the washing conveniences alone, or of the drying conveniences alone, such charges as the Council and the Commissioners respectively think fit, but not exceeding in either case the charges for the use for the same time of both the washing and the drying conveniences.

## "4. WASH-HOUSES OF ANY HIGHER CLASS.

"Such charges as the Council and the Commissioners respectively think fit.

1

person one penny.

" 1st Class. Any sum not exceeding 8*d.* for each person.

"2nd        "        "        1d.        "

" 3rd        "        "        2d.        "

By the Baths and Wash-houses Act, 1899, covered or open swimming baths may be used occasionally for music or dancing, but no money for admission is to be taken at the doors. A licence for each occasion must be obtained from the County Council or (Pt. 3) Public Health Act, 1900.

Where machines are provided by the District Council it is their duty to see that those who pay for use of the wash-houses are not exposed to danger.<sup>1</sup>

With respect to public bathing, section 79 of the Towns Police Clauses Act, 1847, provides—

“ LXIX. Where any part of the sea-shore or strand of any river used as a public bathing-place is within the limits of the special Act the commissioners may make byelaws for the following purposes ; (c) (that is to say,)

“ For fixing the stands of bathing machines on the sea-shore or strand, and the limits within which persons of each sex shall be set down for bathing, and within which persons shall bathe :

“For preventing any indecent exposure of the persons of the bathers :

“ For regulating the manner in which the bathing machines shall be used, and the charges to be made for the same :

<sup>1</sup> *Cowley v. M. of Sunderland*, 1861, 4 L.T. 120.

“For regulating the distance at which boats or vessels let to hire for the purpose of sailing or rowing for pleasure shall be kept from persons bathing within the prescribed limits.”

A public place is one to which the public resort, not necessarily one which they frequent as of right.<sup>1</sup>

## CANAL BOATS.

The registration and regulation of canal boats used as dwellings are enforced by the Canal Boats Acts, 1877 and 1884, and by regulations issued by the Local Government Board. Such boats must be registered with some District Council whose district abuts on the canal on which the boat is navigated. The expenses incurred by District Councils are defrayed as general expenses. “Canal” includes any river, inland navigation, lake, or water being within the body of a county whether it is or not within the ebb and flow of the tide. “Canal boat” means any vessel, however propelled, which is used for the conveyance of goods along a canal; and the Local Government Board have power to apply the Acts to any vessel or class of vessels registered under the Merchant Shipping Act, 1894. A canal company are empowered to establish schools for the lodging, maintenance, and education of the children of persons employed in canal boats. For the purposes of the Elementary Education Acts a canal boat is deemed to belong to some place being a school

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<sup>1</sup> Kitson v. Ashe, 1899, 15 T.L.R. 172.

district within the limits of the District Council with which it is registered. The Board of Education are authorised to make regulations with respect to certificates and pass books of attendances at school to be used by children in canal boats (E.E. Act, section 2, 47 & 48 Viet. c. 75, s. 2).

Persons suffering from infectious disease may be removed from boats which may be detained for cleansing and disinfection. District Councils within whose limits a canal is situate have to report every year, between 1st and 21st January, to the Local Government Board as to the enforcement of the Acts.

A fee of 5s. is paid by the owner when a boat is registered. The regulations deal with registration of boats, appointment of inspector, the lettering, marking, and numbering of a boat, the number and age of persons allowed to dwell on a boat, and with sanitation of cabins. The appointment of a new master of a boat must be notified by the owner.

Railway and canal companies may, with sanction of Board of Trade, make byelaws for the conveyance of explosives on canals (38 & 39 Viet. c. 17, s. 35).



## CHAPTER 18.

## TRAMWAYS.

District Councils are empowered by section 4 of the Tramways Act, 1870, to obtain a Provisional Order from the Board of Trade authorising the construction of tramways in their district. Other persons can apply for such an Order with the consent of the Councils of the districts where they propose to lay down the tramway. The Provisional Order invests the promoters with the special powers conferred on them by the Tramways Act, 1870, viz., to run on highways, the exclusive right to use flange wheels and to break the surface of highways and to interfere with rights and property of others to enable them to carry out the statutory undertaking.

District Councils do not as a rule establish tramway undertakings, though they have power to lease them and thus to protect the ratepayers from loss, they choose rather to resort to the power of compulsory purchase with which section 43 of the Tramway Act, 1870, invests them. This enables the Council to acquire the whole undertaking, including all the real and personal property necessary for conducting



the tramway traffic at the actual value without paying any sum in respect of the acquisition of the statutory rights of the promoters ;<sup>1</sup> and where several undertakings have been incorporated the Council can purchase compulsorily the undertaking authorised by one Act without taking the tramway constructed under the other Acts although the severance may prejudice the general system of the promoting company.<sup>2</sup>

"XLIII. Where the promoters of a tramway in any district are not the local authority, the local authority, if, by resolution passed at a special meeting of the members constituting such local authority, they so decide, may within six months after the expiration of a period of twenty-one years from the time when such promoters were empowered to construct such tramway, and within six months after the expiration of every subsequent period of seven years, or within three months after any order made by the Board of Trade, under either of the two next preceding sections, with the approval of the Board of Trade, by notice in writing require such promoters to sell, and thereupon such promoters shall sell to them their undertaking, or so much of the same as is within such district, upon terms of paying the then value (exclusive of any allowance for past or future profits of the undertaking, or any compensation for compulsory sale, or other consideration whatsoever) of the tramway, and all lands, buildings, works, materials, and plant of the promoters suitable to and used by them for the purposes of their undertaking within such district, such value to be in case of difference determined by an engineer or other fit person nominated as referee by the Board of Trade on the application of either party, and the expenses of the reference to be borne and paid as the referee directs. And when any such sale has been made, all

<sup>1</sup> *London Street Tram. Co. v. L.C.C.*, 1894, A.C. 489.

<sup>2</sup> *North Met. Tram. Co. v. L.C.C.*, 1896, 60 J.P. 23.

the rights, powers, and authorities of such promoters in respect to the undertaking sold, or where any order has been made by the Board of Trade under either of the next preceding sections, all the rights, powers, and authorities of such promoters previous to the making of such order in respect of the undertaking sold, shall be transferred to, vested in, and may be exercised by the authority to whom the same has been sold, in like manner as if such tramway was constructed by such authority under the powers conferred upon them by a provisional order under this Act, and in reference to the same they shall be deemed to be the promoters.

“No such resolution shall be valid unless a month's previous notice of the meeting, and of the purpose thereof, has been given in manner in which notices of meetings of such local authority are usually given, nor unless two-thirds of the members constituting such local authority are present and vote at the meeting, and a majority of those present and voting concur in the resolution; provided that if in Scotland the local authority be the road trustees, it shall not be necessary that two-thirds of such trustees shall be present at the meeting, but the resolution shall not be valid unless two-thirds of the members present vote in favour of such resolution, and unless the said resolution is confirmed in like manner at another meeting called as aforesaid and held not less than three weeks and not more than six weeks thereafter; and it shall be lawful for the chairman of any such meeting, with the consent of a majority of the members present, to adjourn the same from time to time.

“The local authority in any district may pay the purchase money and all expenses incurred by them in the purchase of any undertaking under the authority of this section out of the like rate, and shall have the like powers to borrow on the security of the same as if such expenses were incurred in applying for, obtaining, and carrying into effect any provisional order obtained by them under this Act.

“Where the local rate is limited by law to a certain amount, and is by reason of such limitation insufficient for the payment of such purchase money and expenses, the Board

of Trade may by provisional order extend the limit of such local rate to such amount as they shall think fit and prescribe for the payment of such purchase money and expenses.

“Every such provisional order shall be confirmed in like manner as a provisional order under the authority of Part I. of this Act, and until such confirmation such provisional order shall not have any operation.

“Subject and according to the preceding provisions of this section two or more local authorities may jointly purchase any undertaking or so much of the same as is within their districts.”

The use on highways of vehicles propelled by mechanical power, including light locomotives and motor cars, is subject to regulations signed by the Local Government Board pursuant to the Locomotives on Highways Act, 1896. The rates of speed now permissible for vehicles on highways are as follow:—

Light locomotives (unladen)—

Under  $1\frac{1}{2}$  tons, speed not to exceed 12 miles an hour.

Under 2 tons, speed not to exceed 8 miles an hour.

Under 3 tons, speed not to exceed 5 miles an hour.

If drawing a vehicle, speed not to exceed 6 miles an hour.

Locomotives (other than light), speed not to exceed 4 miles an hour, and when passing through towns not to exceed 2 miles an hour.

Carriages of all kinds, including bicycles may not be driven furiously so as to endanger passengers.

There is a general opinion that the maximum speed of light locomotives should be reduced to 10 miles an hour.



## CHAPTER 19.

## THE MILITARY LANDS ACTS.

*The Defence Act, 1842—Stopping Footpaths—  
Firing over Land.*

The Military Lands Acts, 1892 to 1900, invite attention to the powers of Military Authorities which may conflict with public rights of way. The Defence of the Realm Act, 1842 (5 & 6 Vict. c. 94, ss. 16 and 17), empowers the Ordnance Department to stop up or divert public footpaths and bridle roads which cross lands acquired for the Queen's service, and to dedicate others in lieu thereof, and by the Military Lands Act, 1892, section 13, where a footpath passes inconveniently or dangerously near to any land used for military purposes it may, with the consent of the District Council, and on certificate of Justices that the path to be substituted is convenient for the public, be stopped up, and the certificate of the Justices who make the view pursuant to the Highway Act, 1835, is to be conclusive as to the convenience of the new footpath.

The Defence of the Realm Act, 1860, section 40, empowers the Secretary of State for War without issue of any writ of *ad quod damnum* or other legal processes before proceeding to stop up or divert or alter the level of any highway, way, sewer, drain, or pipe, over, through, under, or adjoining any land vested in the Secretary of State, and affecting the use of fortifications and works of defence. The course of non-navigable streams may also be altered for a like purpose.

The Secretary of State for War is authorised to make byelaws regulating the use of land used for any military purpose, and for securing the public against danger, provided that no such byelaw shall prejudicially affect any right of common. Such byelaws apply to land vested in the Secretary of State or belonging to a volunteer corps or to any land on or over which right of firing has been acquired.

Where the lands are held on lease for military purposes byelaws are not to be inconsistent with any condition of the lease.

In regard to the use of highways, section 16 of the Military Lands Act, 1892, provides :—

“(1.) A byelaw shall not interfere with any highway unless made with the consent of the Highway Authority, but where it appears to the Authority that any highway crosses or runs inconveniently or dangerously near to any land the use of which can be regulated by byelaws under the Act, the Authority may consent to a byelaw providing to such extent as seems reasonable for the temporary

diversion from time to time of the highway or for the restriction from time to time of the use thereof."

Footpaths passing near the land from which a right of firing has been acquired may be stopped up, or in the case of footpaths near lands held on lease for military purposes.

The Military Lands Act as extended by the Naval Works Act, 1895, apply to acquisition of land by the Admiralty for naval purposes.

"Military purposes" includes rifle or artillery practice, the building and enlarging of barracks and camps, the erection of butts, targets, batteries, and other accommodation, the storing of arms, military drill, and any other purpose connected with military matters approved by the Secretary of State for War : and "land" includes any easement in or over lands and any right of firing over lands or other right of user. The Military Lands Act, 1892, section 1, empowers a County Council or a Town Council to purchase land on behalf of a volunteer corps for military purposes.

The Military Manœuvres Act, 1897, 60 & 61 Vict. c. 43, empowers two Justices to suspend the right of way over any road or footpath for 48 hours after seven days public notice of the application.



## CHAPTER 20.

## THE PETROLEUM ACTS, 1871, 1879, AND 1881.

The execution of the Acts relating to petroleum was transferred by section 27, Local Government Act, 1894, from the Justices to District Councils. "Petroleum, to which the Acts 1871-1879, apply, includes any rock oil, Rangoon oil, Burmah oil, oil made from petroleum, coal, schist, shale, peat, or other bituminous substance, and any products of petroleum or any of the above-mentioned oils which, when tested in manner prescribed by the Act of 1879, gives off an inflammable vapour at a temperature of less than 73 degrees Fahrenheit" (section 3, P. Act, 1871; section 2, P. Act, 1879), and for the purpose of hawking of petroleum applies to any petroleum whatsoever (section 2, P. Hawkers Act, 1881).

A small quantity kept either for private use or for sale is exempt from the Acts provided :—

- (1.) That it is kept in separate glass, earthenware, or metal vessels, each of which contains not more than a pint, and is securely stopped :



(2.) That the aggregato amount kept, supposing the whole contents of the vessels to be in bulk, does not exceed three gallons.

Licences for storing petroleum may be granted for a limited time, and may be subject to renewal or not in such manner as the District Council think necessary. A fee of 5s. may be charged for each licence granted. Where a licence is refused the applicant can have a certificate of the grounds on which the Council refused a licence or annexed conditions to the grant thereof, and memorialise the Home Secretary by way of appeal (section 10, P. Act, 1871).

Keeping oil on unlicensed premises or the breach of the conditions of a licence operates as a contravention of the Acts, causes a forfeiture of all petroleum kept, and subjects the occupier of the place in which the oil is kept to a penalty of 20*l.* a day (section 7, P. Act, 1871).

There may be annexed to any such licence such conditions as to the mode of storage, the nature and situation of the premises in which, and the nature of the goods with which petroleum to which this Act applies is to be stored, the facilities for the testing of such petroleum from time to time, the mode of carrying such petroleum within the limits of the licensing authority, and generally as to the safe keeping of such petroleum as may seem expedient to the District Council, but any person licensed to keep petroleum may hawk it if licensed as a hawker or pedlar (section 1, P.H. Act, 1881).

The Distriet Couneil may appoint an Offieer to take samples of oil from dealers, and to test it. If a convietion follows, the expense of testing is charged against the offender. The mode of testing oil to aseertain the temperature at which it will give off inflammable vapour is specified in Schedule 2 of the Act of 1879. The flashing-point is 73 degrees, Fahrenheit. Oil to which the Aets apply must be labelled highly inflammable. The Aets may be extended to any inflammable substance by Order of the Privy Council.

Orders of 26th February and July 1897 apply to ealeium earbide, execept where kept in separate substantial hermetieally closed metal vessels eontaining not more than 1 lb. each, the whole not to exceed 5 lbs.

(1.) Hawkers are not to earry more than 20 gallons of petrolcum in a carriage. (2.) Other carriages and vessels are to be made to prevent escape of liquid. (3.) Other inflammable articles are not to be carried with oil. (4.) The oil is to be stored every night in licensed premises. Search warrant may be issued by Justices to seize oil kept in unlicensed premises, and any constable may seize oil which is hawked in eontravention of the Aet of 1881.

The County Couneil are the Local Authority for the execution of the Explosives Aet, 1875. They grant storage licenees. The situation and eonstrnetion of stores is regulated by Orders in Council.

To authorise retail dealing in gunpowder, persons must register their names and the premises used for keeping it in with the County Council, who are to keep a register of store licenses and registered premises. The powers of the County Council under the Explosives Act, 1875, may be delegated to a District Council (section 28, L.S. Act, 1888).



## CHAPTER 21.

## TOWNS IMPROVEMENT CLAUSES ACT, 1847.

A town is formed by a number of inhabited houses near enough to each other to be regarded one collection of buildings. It includes open spaces surrounded by houses, and embraces the place as it is extended from time to time by the erection of buildings. The "town" is not co-extensive with the limits of an urban district or borough which frequently include rural areas.<sup>1</sup>

The sanitation of provincial towns was little regarded before the passing of the Public Health Act, 1848, the parent of modern legislation for the protection of the health of the people. The provisions of the Code Act known as the Towns Improvement Clauses Act, 1847, relating to sewerage, drainage, and scavenging of towns is superseded by similar provisions of the Public Health Act, 1875, but other provisions relating to the management

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<sup>1</sup> *Milton v. Faversham H.B.*, 10 B. and S. 548. "Vill" corresponds with "town." . . . . Where a town is dignified as a city by charter, the bounds of the city extend from time to time as the town develops.

*See Carington v. Wycombe Ry. Co.*, 1868, L.R., 3 Ch. 377.

Boroughs have a jurisdiction distinct from that of the county.

of streets and the buildings forming them are incorporated with that Act by section 160 thereof ; viz.—

“160. The provisions of the Towns Improvement Clauses Act, 1847, with respect to the following matters, that is to say,—

“(1.) With respect to naming the streets and numbering the houses ; and

“(2.) With respect to improving the line of the streets and removing obstructions ; and

“(3.) With respect to ruinous or dangerous buildings ; and

“(4.) With respect to precautions during the construction and repair of the sewers, streets, and houses, shall, for the purpose of regulating such matters in Urban Districts, be incorporated with this Act.

“Notices for alterations under the sixty-ninth, seventieth, and seventy-first sections, directions under the seventy-third section, and orders under the seventy-fourth section of the said Towns Improvement Clauses Act, may at the option of the Urban Authority be served on owners instead of occupiers, or on owners as well as occupiers, and the cost of works done under any of these sections may, when notices have been so served on owners, be recovered from owners instead of occupiers ; and when such cost is recovered from occupiers so much thereof may be deducted from the rent of the premises where the work is done as is allowed in the case of private improvement rates under this Act.”

By the incorporation of a Code Act with another, the latter is read as if the provisions of the former were enacted verbatim in the latter, and where a part of a code is incorporated it is subject to restrictions imposed on such part by a general provision of the Code.<sup>1</sup>

<sup>1</sup> L. & N.W. Ry. v. Runcorn, 1397, 46 W.R. 125 ; A.G. v. Leeds 1870, 5 Ch.A. 575.

The name by which a street is to be known may be put up or painted by the District Council on any building near the entrance of a street, and occupiers who fail to number their houses are subjected to a penalty of 40s. (sections 64 and 65). The use of a name for a house gives no legal right to the exclusive use of it. A neighbour may adopt the same name.<sup>1</sup>

Section 66 enacts that :—

“The District Council may allow, upon such terms as they think fit, any building within the Urban District to be set forward, for improving the line of the street in which such building, or any building adjacent thereto, is situated.”

This empowers the Council to permit an advance of a building in a street to straighten the building line. Under section 155, Public Health Act, 1875, they can, where houses are rebuilt, prescribe the front line of the new buildings. The object of these sections is to procure uniformity in building. The highway cannot be straightened by a give and take arrangement.<sup>2</sup> Land may be added to a street by agreement, but no part of the space dedicated to public passage can be enclosed without a stopping-up order of the Justices.<sup>3</sup> Building line cannot be regulated by the byelaws. Where houses are pulled down new houses may be built in the same line unless compensation be made by the Council. The Buildings in Streets Act, 1888, enacts that no

<sup>1</sup> Day v. Brownrigg, 1878, 10 Ch.D. 294.

<sup>2</sup> Schultz v. Galashiels, 1895, A.C. 666.

<sup>3</sup> Reg. v. Platts, 1880, 43 L.T. 159.

building is to be erected or brought forward beyond the front main wall of the adjoining building on either side thereof in the same street without the written consent of the District Council. Sections 67 and 68 of the Code Act empower the Council to purchase lands for improving streets, and to require houses projecting beyond the regular line of the street to be set back. Like powers are conferred by sections 154 and 155, Public Health Act, 1875.

Section 69, relates to projections in front of houses which interfere with the convenience of passengers :—

“ LXIX. The District Council may give notice to the occupier or owner of any house or building to remove or alter any porch, shed, projecting window, step, cellar, cellar door or window, sign, sign post, sign iron, showboard, window shutter, wall, gate, or fence, or any other obstruction or projection erected or placed after the passing of the Public Health Act, 1875, against or in front of any house or building within the Urban District, and which is an obstruction to the safe and convenient passage along any street; and such occupier or owner shall, within fourteen days after the service of such notice upon him, remove such obstruction, or alter the same in such manner as shall have been directed by the District Council, and in default thereof shall be liable to a penalty not exceeding forty shillings; and the District Council in such case may remove such obstruction or projection, and the expense of such removal shall be paid by the person so making default, and shall be recoverable as damages: Provided always, that, except in the case in which such obstructions or projections were made or put up by the occupier, such occupier shall be entitled to deduct the expense of removing the same from the rent payable by him to the owner of the house or building.”

The obstruction must exist in fact, not merely in the judgment of the Council. A projecting sign may or not be a source of inconvenience to passengers. A dangerous sign-board is an obstruction, and evidence that passengers are not incommoded thereby is not admissible.<sup>1</sup>

The Justices decide whether the thing complained of is an obstruction to passengers. Where such projections existed before the Public Health Acts came into force in the district, the Council may cause them to be removed or altered as they think fit after giving 30 days' notice, and those who suffer damage by the removal of projections which were lawfully made are entitled to compensation (section 70). The Council need not give the owner or occupier an opportunity of being heard in order to state his objection. If he objects he should notify the Council, and require them to hear him, or state his objection in writing.<sup>2</sup>

Occupiers are liable in respect of injuries caused by defective state of the houses they occupy or by any projection or thing forming a part of them. They are responsible for the maintenance of overhanging lamps.<sup>3</sup> Any patent defect must be at once remedied, and the duty to protect passengers is not shifted by the employment of a contractor to remedy defects. Occupiers are responsible for injuries caused by defective gratings and coal hole

<sup>1</sup> *Read v. Perrett*, 1875, 1 Ex.D. 349.

<sup>2</sup> *A.G. v. Hooper*, 1893, 3 C'n. 483.

<sup>3</sup> *Tarry v. Ashton*, 1876, 1 Q.B.D. 315.



plates where the defects arise during their tenancy.<sup>1</sup> But the owner is responsible for defects existing at the time of letting for short terms.<sup>2</sup>

Where streets have been dedicated subject to existing obstruction caused by cellars or projecting doorsteps, such a dedication is an answer to an action for accidents caused thereby.<sup>3</sup>

Doors and gates must not be hung to open outwards, so as to project over any public way (sections 71 and 72). Covering for cellar entrances must be made of prescribed materials, and houses must be provided with rain-water troughs and spouts, and pipes to carry rain-water away, so that it does not fall on passengers or flow over a footpath (sections 73 and 74). A District Council can notify either the occupier or the owner to furnish such conveniences.

Owners of buildings are bound to maintain them so that they do not endanger passengers or the occupiers of neighbouring buildings. The ruinous property of absentee owners may be demolished, and the expenses incurred recovered from them, or in default, the materials of the buildings and the lands may be sold (sections 76, 77, and 78). The mode of effecting removal of ruinous buildings is prescribed by section 75, which is as follows:—

“If any building or wall, or anything affixed thereon, within the Urban District, be deemed by the Surveyor of the Council to be in a ruinous state, and dangerous to passengers

<sup>1</sup> *Pretty v. Bickmore*, 1873, L.R., 8 C.P. 401.

<sup>2</sup> *Sandford v. Clarke*, 1883, 21 Q.B.D. 398.

<sup>3</sup> *Cooper v. Walker*, 1862, 2 B. & S. 770.

or to the occupiers of the neighbouring buildings, such Surveyor shall immediately cause a proper hoard or fence to be put up for the protection of passengers, and shall cause notice in writing to be given to the owner of such building or wall, if he be known and resident within the said district, and shall also cause such notice to be put on the door or other conspicuous part of the said premises, or otherwise to be given to the occupier thereof, if any, requiring such owner or occupier forthwith to take down, secure, or repair such building, wall, or other thing; as the case shall require; and if such owner or occupier do not begin to repair, take down, or secure such building, wall, or other thing within the space of three days after any such notice has been so given or put up as aforesaid, and complete such repairs, or taking down or securing, as speedily as the nature of the case will admit, the said Surveyor may make complaint thereof before two Justices, and it shall be lawful for such Justices to order the owner, or in his default the occupier (if any) of such building, wall, or other thing, to take down, rebuild, repair, or otherwise secure, to the satisfaction of such Surveyor, the same, or any such part thereof as appears to them to be in a dangerous state, within a time to be fixed by such Justices; and in case the same be not taken down, repaired, rebuilt, or otherwise secured within the time so limited, or if no owner or occupier can be found on whom to serve such order, the District Council shall with all convenient speed cause all or so much of such building, wall, or other thing as shall be in a ruinous condition, and dangerous as aforesaid, to be taken down, repaired, rebuilt, or otherwise secured in such manner as shall be requisite; and all the expenses of putting up every such fence, and of taking down, repairing, rebuilding, or securing such building, wall, or other thing, shall be paid by the owner thereof."

The Surveyor's certificate is conclusive as to the condition of the buildings.

This enactment applies to dangerous structures, whether adjoining a highway or not.<sup>1</sup>

The incumbent of a parish church is not responsible for its dangerous condition.<sup>2</sup>

To prevent accidents during the construction and repair of sewers, streets, and houses, bars and hoardings are to be set up to prevent passengers and vehicles from passing over that part of a street where the alterations are being done,<sup>3</sup> and the works are to be lighted and guarded during the night. Section 80 of the Act of 1847 directs the putting up of hoardings during the erection of buildings where the work is conducted from a street, with a platform and handrail for the safety of passengers. In Urban Districts where the Public Health Acts Amendment Act, 1890, is in force, section 80 is repealed and section 34 of the Act of 1890 is substituted therefor:—

34.—(1.) Every person intending to build or take down any building, or to alter or repair the outward part of any building in any street or court shall—

- “(a) before beginning the same, unless the Urban Authority otherwise consent in writing, cause close-boarded hoards or fences to the satisfaction of the Urban Authority to be put up in order to separate the building from the street or court ;
- “(b) if the Urban Authority so require, make a convenient covered platform and handrail to serve as a foot-way for passengers outside of such hoard or fence ;
- “(c) continue such hoard or fence with such platform and handrail as aforesaid standing and in good condi-

<sup>1</sup> *L.O.C. v. Herring*, 1894, 2 Q.B. 522.

<sup>2</sup> *R. v. Lee*, 1878, 4 Q.B.D. 522.

<sup>3</sup> Section 79, *see Woodall v. Nuttal*, 1891, 56 J.P. 150.

tion to the satisfaction of the Urban Authority during such time as they may require :

“(d) if required by the Urban Authority, cause the same to be sufficiently lighted during the night.

“(e) remove the same when required by the Urban Authority.

(2.) Every person who fails to comply with any of the provisions of this section shall be liable to a penalty not exceeding five pounds, and to a daily penalty not exceeding forty shillings.”

Deposits of building materials or excavations, whether done by the order of the District Council or not, are to be lighted at night, and such deposits or excavations are not to be continued an unreasonable time, under a penalty of 5*l.* for an offence, and 40*s.* a day for continuance (sections 81 and 82). A penalty may be inflicted on a Surveyor who neglects to light or fence the work of a District Council.

Holes and dangerous places near a street may be fenced by order of the District Council, and the expenses incurred recovered from the owner of the land (section 83). This does not apply to sources of danger arising from the site of a road being at the side of a stream or on a steep bank.<sup>2</sup> Dangerous quarries near highways are required to be fenced under the Quarry (Fencing) Act, 1887, and by the Quarries Act, 1894, every quarry exceeding 20 feet deep at any part of it must be fenced.

The Highway Acts empower District Councils to fence roads for the protection of passengers, and

<sup>1</sup> *Fearnly v. Ormsby*, 1879, 4 C.P.D. 136.

<sup>2</sup> *Wilson v. M. of Halifax*, 1868, L.R., 3 Ex. 114.

section 149, Public Health Act, 1875, provides for the fencing of a street ; but it is not obligatory on District Councils to fence dangerous places or streams. Passengers and residents must submit to inconveniences incidental to natural inequalities of the surface of the country, and to such as are attributable to reasonable exercise of the rights of neighbours, but those who cause loss to others by unreasonably protecting works or unduly stopping access to premises may be made responsible.<sup>1</sup>

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<sup>1</sup> *Fritz v. Hobson*, 1880, 14 Ch.D. 542.



## CHAPTER 22.

## MARKETS.

An Urban District Council may establish a market pursuant to section 166 P.H. Act, 1875. To enable the Council to establish and regulate a market the provisions of the Markets and Fairs Clauses Act, 1847, are incorporated with the Public Health Acts:—

“With respect to the holding of the market and the protection thereof; and

“With respect to the weighing goods and carts; and

“With respect to the stallages rents and tolls; and

Provided that all tolls leviable by an Urban Authority shall be approved by the Local Government Board.

“An Urban Authority may with respect to any market belonging to them make byelaws for any of the purposes mentioned in section forty-two of the Markets and Fairs Clauses Act, 1847, so far as those purposes relate to markets, and printed copies of any byelaws so made shall be conspicuously exhibited in the market.”

Tolls are levied on the cattle and articles brought into the market and on the weighing and measuring of goods. The rents and stallages are fixed at the discretion of the Council.

“ 166. An urban authority shall have power, with the consent of the owners and ratepayers of their district, expressed by resolution passed in manner provided by Schedule III. to this Act, and where the urban authority are a town council they shall have power, with the consent of two-thirds of their number, to do the following things, or any of them, within their district :—

- “ To provide a market place, and construct a market house and other conveniences, for the purpose of holding markets :
- “ To provide houses and places for weighing carts :
- “ To make convenient approaches to such market :
- “ To provide all such matters and things as may be necessary for the convenient use of such market :
- “ To purchase or take on lease land, and public or private rights in markets and tolls for any of the foregoing purposes :
- “ To take stallages rents and tolls in respect of the use by any person of such market :

But no market shall be established in pursuance of this section so as to interfere with any rights powers or privileges enjoyed within the district by any person without his consent.”

The rules relating to resolutions of owners and ratepayers are set forth in the Appendix. Except in regard to the establishment of markets and the promotion or opposition to Bills in Parliament, such resolutions are superseded by the procedure under section 57 L.G. Act, 1888. If a resolution is passed it is not obligatory on the Council to provide a market ; if they determine to provide a market place it must be within the Urban District.

Those who have market privileges within the district can claim compensation if they suffer loss

by reason of the establishment of the statutory market of the Conneil. Where the Couneil acquire market rights derived from a royal charter they do not exercise those rights by force of the charter but pursuant to the powers conferred on them by the P.H. Acts.

Ancient markets are frequently held in streets, but the Council are not empowered to make a market place of any street or highway.

It is often difficult to determine whether the "market place" forms a street vested in the Conneil. Each case depends on its own circumstances. Ordinarily it is not so vested, and those who own the market control the use of the market place and the soil under it, and may utilise it for purposes incidental to the exercise of market rights, *i.e.*, by sinking a cattle-weighing machine and erecting a permanent weighing-house.<sup>1</sup>

Market day may be on any day or every day. The mode and time of using the market place may be regulated, and different sites may be allotted for wholesale and retail trade. A byelaw that "sale rings" shall not be used for private sales or for sales in which any class of the public is excluded from bidding is valid.<sup>2</sup>

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<sup>1</sup> McIntosh v. Rumford L.B., 1889, 61 L.T. 185. In many towns the market-house or cross is called the market-place, and the square adjoining, the market-hill.

<sup>2</sup> Scott v. Glasgow Corpn., 1899, A.C. 471.



Section 13 of the Markets and Fairs Clauses Act, 1847, provides that—

“After the market place is open for public use every person other than a licensed hawker who shall sell or expose for sale in any place within the prescribed limits, except in his own dwelling-place or shop, any articles in respect of which tolls are authorised to be taken in the market, shall for every such offence be liable to a penalty not exceeding forty shillings.”

This defeats the right to hold auctions on market day in sale rooms, a common practice of establishing a rival market to the detriment of the market authority.<sup>1</sup> Cheapjack's who sell on the market place on days not named as market days, even when so doing by leave of the market authority must be armed with a hawker's license.<sup>2</sup> Pedlars are only within the exemption of section 13 while trading as pedlars, if they use horses and carts they require hawker's licenses.<sup>3</sup>

### FAIRS.

Pleasure fairs have become a recurring interruption to business, a disturbance of the public peace, and nuisance to Local Authorities. The management of fairs does not come within the scope of the statutory powers of District Councils. If their officers interfere it is as agents of the owners of the franchise to whose predecessors as owners of a manor the Royal grant was made to hold the fair on specified days anywhere

<sup>1</sup> *Spurling v. Bantoft*, 1891, 2 Q.B. 384; *M. of Birmingham v. Foster*, 1894 10 T.L.R. 309.

<sup>2</sup> *Jay v. Smales*, “The Times,” April 2, 1900.

<sup>3</sup> *Woolwich L.B. v. Gardiner*, 1895, 2 Q.B.D. 497.

within the manor, and "anywhere" is now generally in the streets of the town. The praetice of holding fairs in highways is old, probably the fairs are older than the highways, which have been dedicated to enable folks to get to the fair, and a dedication subject to a partial interruption for a reasonable time is valid ;<sup>1</sup> hence the legal inference is in favour of a fair which has been held in a highway as far back as living memory can witness ; and even where it can be shown that a highway existed before the date of the charter for the fair, it cannot be dealt with as an obstruction to traffic or as an indictable offence, if it is immemorial and ancient. Examples of this may be found on Roman roads, which are the Royal roads of England, and were formerly maintained by the Crown.<sup>2</sup> This only applies to chartered fairs ; a statute fair or sessions for hiring servants cannot be older than the statute of labourers, so that can be stopped by the Highway Authority,<sup>3</sup> and those who authorise the obstruction may be indicted ; they are in the same position as the proprietors of travelling shows.

It is not, however, advisable in all cases to indict offenders, the District Council as Highway Authority are empowered to remove obstructions without having recourse to legal proceedings, and if the court think they have acted unreasonably they may be deprived of their costs, or, perhaps, only get taxed costs allowed.<sup>4</sup>

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*Elgood v. Bullock*, 1844, 6 Q.B. 383.

The Crown licensed the grantee of a fair to hold it on the highway.

*Simpson v. Wells*, 1872, L.R., 7 Q.B. 214.

<sup>24</sup> *Bostock v. Ramsey* U.D.O., 1899, 16 T.L.R. 97.

Fairs and markets are not affected by Acts directed against nuisances, for what is legally done cannot be dealt with as a nuisance ;<sup>1</sup> hence Local Authorities in order to get rid of a fair must induce the owner of the privilege to consent to its abolition by the Home Secretary, pursuant to the Fairs Act, 1871, (34 Vict. c. 12).

The Secretary of State is empowered to make an order abolishing any fair where he has received a representation by a District Council that it will be for the convenience and advantage of the public.

If it is desirable to alter the fair day or abridge the duration of a fair the Home Secretary can make an order for that purpose pursuant to the Fair Act, 1873 (36 & 37 Vict. c. 37), at the instance either of the owner or of a District Council.

### STAGE PLAYS.

The business of the County Justices out of session in respect of licensing of houses or places for the public performance of stage plays, was transferred to the County Council by the Local Government Act, 1888, section 7, and by section 28 of that Act power was conferred on a County Council to delegate such business, with or without any restrictions or conditions, to any District Council. "Stage plays" includes every tragedy, comedy, farce, opera, burlesque,

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<sup>1</sup> G.E. Ry. v. Goldsmid, 1884, 9 A.C. 927.

interlude, melodrama, pantomime, or other entertainment of the stage or any part thereof (6 & 7 Vict. c. 68, s. 23).

Performances, accompanied by scenery, which convey some story by gesture are stage plays, *e.g.*, a ballet dance associated with pantomimic action, but not a mere ballet dance which is confined to dancing. Mute dancing illustrating a story is a play.<sup>1</sup> Each dancer plays a part, even where actors do not come on the stage, but are reflected from mirrors so as to simulate appearance to the audience, as in *Day v. Simpson*.<sup>2</sup> An occupier of premises who permits them to be used on one occasion for a play is liable to a penalty of 20*l.*, imposed by 6 & 7 Vict. c. 68, s. 2. The Licensing Authority have a discretion about the granting of a licence, and they may attach to their grant a condition that the applicant shall undertake not to apply for an excise licence for the sale of intoxicants.<sup>3</sup> They must not refuse to hear an application until fixed rules are complied with. Such a fetter would prevent the exercise of a discretion at the hearing,<sup>4</sup> but the existence of rules of practice in the grant of licences does not, where a full hearing is given, prevent them from exercising their discretion according to law.<sup>5</sup>

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<sup>1</sup> *Wigan v. Strange*, 1865, L.P., 1 C.P. 175.

<sup>2</sup> 1865, 18 C.B., N.S. 680.

<sup>3</sup> *R. v. West Riding C.C.*, 1892, 2 Q.B. 386.

<sup>4</sup> *R. v. Silvester*, 1862, 31 L.J.M.C. 93.

<sup>5</sup> *R. v. Sheerness U.D.C.*, 1898, 62 J.P. 563.

Where guests at an inn were allowed to divert themselves with a piano kept in a room adjoining and open to the bar, it was decided that such use was not a public entertainment.<sup>1</sup>

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<sup>1</sup> *Brearley v. Morley*, 1899, 2 Q.B. 121.



## CHAPTER 23.

## SLAUGHTER-HOUSES.

Urban District Councils are empowered to provide slaughter-houses, to make charges for the use of them, and to regulate them by byelaws (section 169, P.H. Act, 1875); they cannot, however, compel butchers to use them except by refusing to license other buildings for slaughtering within the district. Slaughter-houses include knaekers' yards, and any building or place used for slaughtering cattle, horses, or animals of any description for sale.

Pursuant to section 125 of the Act of 1847 a Council may license such slaughter-houses and knaekers' yards as they think proper. The duration of such licences is unlimited, but where Part III. of the Public Health Acts Amendment Act, 1890, is adopted, the duration of a licence may be fixed.

Slaughter-houses which were in use<sup>1</sup> when the Public Health Acts first came into force in the district are registered with the Council, and such registration warrants a continuance of their use, but new slaughter-houses cannot be established without being duly

<sup>1</sup> "Pining" animals in is n-ising as a slaughter-house. *Hid: r.* Littlejohn. 1896, 74 L.T. 24.

licensed (sections 126 and 127). Byelaws may regulate inspection and the prevention of cruelty to animals, cleansing, the removal of offal at least once a day, and the provision of supply of water. A licence for the erection of a slaughter-house operates as a permission to use it.<sup>1</sup> Rebuilding licensed premises does not revoke the licence,<sup>2</sup> and a licence covers an addition to the buildings.<sup>3</sup> The Act extends to places where cattle are killed, though not intended for human food.<sup>4</sup> The occupier of unlicensed premises is liable for the offence of using them contrary to the Act, not persons who pay him for permission to kill animals there,<sup>5</sup> and the employer is liable for non-observance of byelaws by his servant, although he acts against express orders.<sup>6</sup> Justices may suspend a licence when the licensee is convicted of an offence, or revoke it on a second conviction. Officers of the District Council may enter and inspect any premises within the district used as slaughter-houses. Meat unfit for the food of man may be seized and carried before a Justice for condemnation.

Under the Public Health Acts Amendment Act, 1890, change of occupancy of premises registered or licensed for use, and used as a slaughter-house, must be notified to the Inspector of Nuisances of the Council, and one conviction for having in possession,

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<sup>1</sup> *Anthony v. Brecon*, 1879, L.R., 7 Ex. 399.

<sup>2</sup> *Hanman v. Adkins*, 1876, 40 J.P. 744.

<sup>3</sup> *Brighton L.B. v. Stenning*, 1867, 15 L.T. 567.

<sup>4</sup> *Elias v. Nightingale*, 1858, 8 E. & B. 698.

<sup>5</sup> *R. v. Hepworth*, 1866, 14 L.T. 600.

<sup>6</sup> *Colman v. Mills*, 1897, 1 Q.B. 396.

or selling, or exposing for sale meat unfit for food warrants revocation of the licence (sections 30 and 31 P.H. Acts A. Act, 1890).

The Local Government Board, in a Memorandum of 25th July 1877, suggest the following rules as a guide to the Council in granting licences.

"1. The premises to be erected, or to be used and occupied as a slaughter-house, should not be within 100 feet of any dwelling-house, and the site should be such as to admit of free ventilation by direct communication with the external air on two sides at least of the slaughter-house.

"2. Lairs for cattle in connection with the slaughter-house should not be within 100 feet of a dwelling-house.

"3. The slaughter-house should not in any part be below the surface of the adjoining ground.

"4. The approach to the slaughter-house should not be on an incline of more than one in four, and should not be through any dwelling-house or shop.

"5. No room or loft should be constructed over the slaughter-house.

"6. The slaughter-house should be provided with an adequate tank or other proper receptacle for water, so placed that the bottom shall not be less than six feet above the level of the floor of the slaughter-house.

"7. The slaughter-house should be provided with means of thorough ventilation.

"8. The slaughter-house should be well paved with asphalt or concrete, and laid with proper slope and channel towards a gully which should be properly trapped and covered with a grating, the bars of which should not be more than three-eighths of an inch apart. Provision for the effectual drainage of the slaughter-house should also be made.

"9. The surface of the walls on the interior of the slaughter-house should be covered with hard, smooth, impervious material to a sufficient height.



"10. No water-closet, privy, or cesspool should be constructed within the slaughter-house. There should be no direct communication between the slaughter-house and any stable, water-closet, privy, or cesspool.

"11. Every lair for cattle in connection with the slaughter-house should be properly paved, drained, and ventilated. No habitable room should be constructed over any lair."

The powers of quarter sessions in relation to the licensing of knackers' yards within a county district are transferred by the Local Government Act, 1894, to the District Council. Those powers were exercised by the Justices under the Knackers Act, 1786, an Act for regulating places kept for slaughtering horses. This transfer empowers a Rural District Council to license knackers' yards ; to acquire control of slaughter-houses, a Rural Council must acquire urban powers.



## CHAPTER 24.

## SALE OF FOOD AND DRUGS ACTS, 1875-1899.

*The Public Analyst—The Prejudice of the Purchaser—Warranty—Servants—Mixtures—The Label—Disclosure.*

Section 3 of the Sale of Food and Drugs Act, 1899, is misunderstood. The Act dealing with the default of a Local Authority to put in force the powers conferred by the Act refers to "every Local Authority charged with the execution of the laws relating to the sale of food and drugs." This might be read to include District Councils, but section 25 of the Act interprets the expression "Local Authority" as one authorised to appoint an analyst for the purposes of the Sale of Food and Drugs Act, and by reference to the Sale of Food and Drugs Act, 1875, the power to appoint analysts is conferred on the Court of Quarter Sessions of every county and the Town Council of every borough having a separate Court of Quarter Sessions, or having a separate police establishment. This power of the Court of Quarter Sessions was transferred by section 3, Local Government Act, 1888, to the County Council. Hence it follows that the power of a District Council in

relation to the supervision of the sale of food and drugs is limited to the taking of samples for submission to the public analyst and the prosecution of the offenders.

Prosecutions under these Acts may be instituted by any purchaser. Private purchasers cannot compel a tradesman to sell any article they demand, and where purchases are made their right to prosecute for an offence against the Acts does not depend on compliance with the formalities prescribed in case of purchases made by officials for test purposes.

In *Buckler v. Wilson*<sup>1</sup> it was decided that the purchase of a sample with a view to analysis was not a necessary condition to the institution of a prosecution, and that an offence may be proved by other satisfactory evidence. Official purchasers must obtain a certificate of a public analyst even where the seller admits that the article sold is adulterated.<sup>2</sup> Guardians of the Poor and other consumers who enter into contracts for the delivery of provisions for a period, can obtain an analysis at any time, and support the prosecution by their own chemists' analysis.

The Act of 1899 contains important provisions relating to the use of a warranty or invoice as a defence, and to proceedings against the warrantor. This protects an innocent retailer and catches the fraudulent wholesale dealer who too often keeps out

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<sup>1</sup> 1896, 73 L.T. 580.

<sup>2</sup> *Smart v. Watts*, 1895, 1 Q.B. 219. The analysis must be accurate, *Lee v. Bent*, 1901, 2 K.B. 290; and weight stated if accuracy depends on it. *Sneath v. Taylor*, 1901, 2 K.B. 376.

of court and pockets large profits. Prosecution of a warrantor does not defeat any remedy which a buyer may have for a breach of contract, but enables him to recover, in addition to any other damages recoverable by him, the amount of penalty paid and costs incurred under the Act by reason of the breach of contract.

Section 20 of the Sale of Food and Drugs Act, 1899, is as follows :—

“20.—(1.) A warranty or invoice shall not be available as a defence to any proceeding under the Sale of Food and Drugs Acts unless the defendant has, within seven days after service of the summons, sent to the purchaser a copy of such warranty or invoice with a written notice stating that he intends to rely on the warranty or invoice, and specifying the name and address of the person from whom he received it, and has also sent a like notice of his intention to such person.

“(2.) The person by whom such warranty or invoice is alleged to have been given shall be entitled to appear at the hearing and to give evidence, and the court may, if it thinks fit, adjourn the hearing to enable him to do so.

“(3.) A warranty or invoice given by a person resident outside the United Kingdom shall not be available as a defence to any proceeding under the Sale of Food and Drugs Acts, unless the defendant proves that he had taken reasonable steps to ascertain and did in fact believe in the accuracy of the statement contained in the warranty or invoice.

“(4.) Where the defendant is a servant of the person who purchased the article under a warranty or invoice he shall, subject to the provisions of this section, be entitled to rely on section twenty-five of the Sale of Food and Drugs Act, 1875, and section seven of the Margarine Act, 1887, in the same way as his employer or master would have been entitled to do if he had been the defendant, provided that the servant

further proves that he had no reason to believe that the article was otherwise than that demanded by the prosecutor.

“(5.) Where the defendant in a prosecution under the Sale of Food and Drugs Act has been discharged under the provisions of section twenty-five of the Sale of Food and Drugs Act, 1875, as amended by this Act, any proceedings under the Sale of Food and Drugs Acts for giving the warranty relied on by the defendant in such prosecution, may be taken as well before a court having jurisdiction in the place where the article of food or drug to which the warranty relates was purchased for analysis as before a court having jurisdiction in the place where the warranty was given.

“(6.) Every person who, in respect of an article of food or drug sold by him as principal or agent, gives to the purchaser a false warranty in writing, shall be liable on summary conviction, for the first offence, to a fine not exceeding twenty pounds, for the second offence to a fine not exceeding fifty pounds, and for any subsequent offence to a fine not exceeding one hundred pounds, unless he proves to the satisfaction of the court that when he gave the warranty he had reason to believe that the statements or descriptions contained therein were true.

A warranty, in order to satisfy section 25 of the Act of 1875, must cover the specific delivery of the articles in respect of which an offence is charged. A general warranty, in the absence of some written evidence that the specific delivery was made under the contract, does not suffice.<sup>1</sup>

“XXV. If the defendant in any prosecution under this Act prove to the satisfaction of the justices or court that he had purchased the article in question as the same in nature, substance, and quality as that demanded of him by the prosecutor, and with a written warranty to that effect, that he had no reason to believe at the time when he sold it that the article was otherwise, and that he sold it in the same state as when he

<sup>1</sup> *Harris v. Hall*, 1883, 12 Q.B.D. 97; *Robertson v. Harris*, 1900, 2 Q.B. 117; but it may cover future deliveries, *Elliot v. Pilcher*, 1901, 70 L.J. K.B. 795.

purchased it, he shall be discharged from the prosecution, but shall be liable to pay the costs incurred by the prosecutor, unless he shall have given due notice to him that he will rely on the above defence."

Where the public interest is involved, questions of hardship in the enforcement of the law are not entertained. Intentions are immaterial when the prohibited act has been done.<sup>1</sup> The policy of the Sale of Food and Drugs Acts is to protect the buyer, and to the effect that the law makes it a risk of the business of those who sell food to do so without prejudice to the buyer. The food sold must be pure. It is no offence to skim milk, and it is no offence to sell skimmed milk, if sold as such; but milk means pure milk in its natural state, hence it is not pure, if by any addition or abstraction the natural state of the article does not exist at the time of sale, and a buyer is prejudiced who does not get for his money what he asks for. The seller is responsible for the dishonest acts of his servants. The master may have taken all possible precautions to protect himself and his customers from the dishonesty of servants, but his innocence does not alter the risks of the business. He must make his profits large enough to cover the risks.<sup>2</sup> No amount of vigilance can protect the seller from the dishonesty of persons who have access to food during the transit to a distant place of delivery, but his risk continues while he has any property in the food on the way. The

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<sup>1</sup> *e.g.*, where arsenic is innocently introduced in ale in the brewing process—*Goulden v. Rook*, 1901, 2 K.B. 290.

<sup>2</sup> *Brown v. Foot*, 1892, 66 L.J. 649.

inspector will lurk at the terminus of the line, the place of delivery, and take a sample before there is actual delivery to the customer. The farmer has to pay the penalty for the dishonesty of the railway servants,<sup>1</sup> unless he stipulates that the delivery is to be at the country station, then his property in the food ends, and the transit is at the risk of the customer. But although innocence does not purge a seller of an offence, it is allowed to mitigate it, and the Summary Jurisdiction Act, 1879, section 17, invests the court with power to impose a nominal penalty where a seller has not done anything which can be deemed a breach of good faith.

A servant may be convicted as well as his employers, and he rely on a warranty or invoice given to them.

The sale of mixtures must be accompanied at the time of delivery of the article sold by a notice on a label distinctly and legibly written or printed on or with the article to the effect that the same is mixed; and such notice is not deemed a compliance with the Acts unless it is not obscured by other matter on the label.<sup>2</sup>

The function of a label is to protect the tradesman from offending against the requirements of the Food and Drugs Acts, which prohibit the sale, without disclosure, of articles of food in an altered state. The offence is to sell without disclosing the fact of alteration, though such alteration is not intentionally

<sup>1</sup> *Parker v. Alder*, 1899, 1 Q.B. 20.

<sup>2</sup> Section 8 S. of F. and D. Act, 1875, amended by section 12, Act, 1899.



caused. If the analyst proves the altered state of the article sold the tradesman must shelter himself under a label. And it is for him to prove that his label satisfies the requirements of the Acts by disclosing an alteration in the article sold.

A common form of label would be useful to the trade to enable folks to drive coach and horses through the Acts, and such might be drawn; but now we direct attention to instances where the Court has, under all the circumstances of the case before it, dealt with labels as sufficient or insufficient to protect the seller of an article of food in other than its natural state. Pure milk is difficult to handle. The air is its analyst. Fat, whey, and curd separate themselves, in defiance of the milkseller's patent churn with a dasher. That is a risk of the trade. He must do his best to provide against and disclose it. If no precaution necessary to preserve the ordinary proportion of the constituent parts of milk has been omitted, it is hard to see how there can be an alteration within section 9 of the Act of 1879. That is for the Justices to decide; but about the sufficiency of the label a point of law may arise on which to invite the judgment of the High Court. In *Spiers and Pond v. Bennet*,<sup>1</sup> a glass in which milk was sold was distinctly labelled "Not guaranteed as new or with all its cream, see notices"; and the "Milk notice" which was displayed on the counter where the milk was sold notified that the milk sold

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<sup>1</sup> 1896, 2 Q.B. 65.



was bought under a warranty of purity, and that precautions were taken to supply it in a natural condition, but that the sellers were unable to guarantee it as pure with all its cream.

It is difficult to see what more could be done to protect the seller from the risk imposed by the Acts ; and under all the circumstances the Court came to the conclusion that there had been an adequate disclosure.

In refreshment rooms at a railway station such notices do not frighten customers, but what shop-keeper likes to notify the public of the dubious quality of his stock. Who cries stinking fish ? Except where customers are in a mighty hurry and will never be seen again.

But a label must be true ; if it need not state the extent of the alteration, it must state the kind of alteration which has been caused in the food ; thus the label on the " Swiss Dairy Brand " is " This tin contains skim milk prepared and preserved with " the finest cane sugar," and it is a sufficient disclosure where the article sold is " skimmed milk " ; but such a label will not cover the process of the milk separator which diminishes the food value of milk to a far greater extent than skimming.<sup>1</sup> To label separated milk as skimmed milk is not true, and to meet the requirements of the Food and Drugs Acts a disclosure must speak the whole truth about the article sold in an altered state.

<sup>1</sup> *Petchley v. Taylor*, 1898, 78 L.T. 501.

## CHAPTER 25.

## COMMON LODGING-HOUSES.

Common lodging-houses are those to which all persons are invited to come for lodging, and which are kept open for profit. The lodgers, casual and others, are not ordinarily lodged in separate rooms, but use of bedrooms in common is not essential to bring a lodging-house within the provisions of the P.H. Acts relating to common lodging-houses.<sup>1</sup> Where lodging-houses are so used as to require supervision in order to insure cleanliness they must be registered with the District Council.<sup>2</sup>

Section 78 of the Public Health Act enacts as follows :—

“78. A house shall not be registered as a common lodging-house until it has been inspected and approved for the purpose by some officer of the local authority ; and the local authority may refuse to register as the keeper of a common lodging-house a person who does not produce to the local authority a certificate of character, in such form as the local authority direct, signed by three inhabitant householders of the parish respectively rated to the relief of the poor of the parish within

<sup>1</sup> Langdon v. Broadbent, 1877, 37 L.T. 434.

<sup>2</sup> Section 77, P.H. Act, 1875.

which the lodging-house is situate, for property of the yearly rateable value of six pounds or upwards."

The Council may refuse to register a house if their officer does not approve of it, but they cannot refuse to register any person as a keeper who produces a certificate duly signed.<sup>1</sup>

"80. Every local authority shall from time to time make byelaws—

- "(1.) For fixing, and from time to time varying, the number of lodgers who may be received into a common lodging-house, and for the separation of the sexes therein ; and
- "(2.) For promoting cleanliness and ventilation in such houses ; and
- "(3.) For the giving of notices and the taking precautions in the case of any infectious disease ; and
- "(4.) Generally for the well ordering of such houses."

A keeper on a third conviction for an offence may be disqualified by order of the Court for keeping a common lodging-house for five years without the previous licence in writing of the Council ; but a licence cannot be withdrawn except for the reasons set out in the Act.<sup>2</sup>

Section 86 enumerates offences :—

"86. Any keeper of a common lodging house who—

- "(1.) Receives any lodger in such house without the same being registered under this Act ; or
- "(2) Fails to make a report, after he has been furnished by the local authority with schedules for the purpose in pursuance of this Act, of the persons resorting to such house ; or

<sup>1</sup> *Ex parte Kavanagh*, 1 Q. 4, 10 T.L.R. 539.

<sup>2</sup> *Blake v. Kelly*, 1887, 52 J.P. 263.

“(3.) Fails to give the notices required by this Act where any person has been confined to his bed in such house by fever or other infectious disease ; shall be liable to a penalty not exceeding five pounds, and in the case of a continuing offence, to a further penalty not exceeding forty shillings for every day during which the offence continues.”

Common lodging-houses are to be inspected by officers of the Council, and where an insufficient water supply is reported, the house may be removed from the register.<sup>1</sup>



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<sup>1</sup> Sections 81 and 85.

## CHAPTER 26.

HOUSES LET IN LODGINGS—TENTS—AND  
VANS.

The Housing of the Working Classes Act, 1885, sections 7 and 8, empowers all District Councils to make byelaws respecting lodging houses, and imposes on them the duty to put in force from time to time, as occasion may arise, their powers so as to secure the sanitation of such premises. A lodging-house is a house or part of a house which is let in lodgings or occupied by members of more than one family. The "landlord" is the person who derives the profits of the lettings in a lodging-house;<sup>1</sup> and a lodger is any person who occupies a room or part of a room in a lodging-house. The byelaws may enforce registration. Where a tenant let four unfurnished rooms of his house to one family, the High Court decided that he was the landlord of a lodging-house within the scope of the byelaws.<sup>2</sup> The model series of byelaws issued by the Local Government Board exempts houses in which the furnished and unfurnished lodgings let

<sup>1</sup> See *Commissioner of Police v. Cartmel*, 1896, 1 Q.B. 655; *Colliman v. Mills* 1897, 1 Q.B. 296.

<sup>2</sup> *Roots v. Beaumont*, 1886, 50 J.P. 244, 51 J.P. 197.

exceed a fixed minimum rent. The District Council, guided by the circumstances of the locality, determine what minimum rent they prescribe as the basis of exemption. Some Councils extend the exemptions to all houses where the landlord resides on the premises, and not more than one lodger is received in the house.

Section 90, Public Health Act, 1875, as amended, is as follows :—

“ Every District Council shall be empowered to make bye-laws for the following matters (that is to say) :

“ (1.) For fixing and from time to time varying the number of persons who may occupy a house or part of a house which is let in lodgings or occupied by members of more than one family and for the separation of the sexes in a house so let or occupied :

“ (2.) For the registration of houses so let or occupied ;

“ (3.) For the inspection of such houses ;

“ (4.) For enforcing drainage and the provision of privy accommodation for such houses, and for promoting cleanliness and ventilation in such houses ;

“ (5.) For the cleansing and lime washing at stated times of the premises, and for the paving of the courts and courtyards thereof ;

“ (6.) For the giving of notices and the taking of precautions in case of any infectious diseases.

“ This section shall not apply to common lodging-houses within the provisions of this Act relating to common lodging-houses.”

The byelaws are supplementary to the statutory powers of the Council. The model series does not touch the separation of the sexes, and the practice

of sub-letting, which prevails by the connivance of landlords, would make it difficult to enforce such a byelaw, but the evil of sub-letting ought to be checked. The power to prescribe the number of water-closets in a lodging-house should be strictly enforced. It is usual to prescribe such a number of closets that the number of persons who occupy rooms in the house as sleeping apartments shall be in the proportion of not less than one closet to every twelve persons.

The decent lodging and accommodation of hop-pickers and fruit-pickers may be secured by byelaws, and section 9 of the Housing of the Working Classes Act, 1885, enables the Council to supervise tents, vans, and sheds used as dwellings.

" 9.—(1.) A tent, van, shed, or similar structure used for human habitation, which is in such a state as to be a nuisance or injurious to health, or which is so overcrowded as to be injurious to the health of the inmates, whether or not members of the same family, shall be deemed to be a nuisance within the meaning of section ninety-one of the Public Health Act, 1875 ; and the provisions of that Act shall apply accordingly.

" (2.) A sanitary authority may make byelaws for promoting cleanliness in, and the habitable condition of tents, vans, sheds, and similar structures used for human habitation, and for preventing the spread of infectious disease by the persons inhabiting the same, and generally for the prevention of nuisances in connection with the same.

" (3.) Where any person duly authorised by a sanitary authority or by a justice of the peace has reasonable cause to suppose either that there is any contravention of the provisions of this Act, or any byelaw made under this Act, in any

tent, van, shed, or similar structure used for human habitation, or that there is in any such tent, van, shed, or structure any person suffering from a dangerous infectious disorder, he may, on producing (if demanded) either a copy of his authorisation purporting to be certified by the clerk or a member of the sanitary authority or some other sufficient evidence of his being authorised as aforesaid, enter by day such tent, van, shed, or structure, and examine the same and every part thereof in order to ascertain whether in such tent, van, shed, or structure there is any contravention of any such byelaw or a person suffering from a dangerous infectious disorder.

“(4.) For the purposes of this section “day” means the period between six o'clock in the morning and the succeeding nine o'clock in the evening.

“(5.) If such person is obstructed in the performance of his duty under this section, the person so obstructing shall be liable, on summary conviction, to a fine not exceeding forty shillings.”

The Fruit Pickers' Lodgings Act, 1882, and section 314, P.H. Act, 1875, enables any District Council to make byelaws for securing the decent lodging and accommodation of persons engaged in picking of hops, fruit, and vegetables within their district.

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## CHAPTER 27.

## POLICE REGULATIONS.

*Prosecution of Offences—Recovery of Penalties—  
Summary Proceedings.*

All offences under the Public Health Acts, and all penalties, forfeitures, costs, and expenses under those Acts directed to be recovered in a summary manner, or the recovery of which is not otherwise provided for may be prosecuted and recovered in manner directed by the Summary Jurisdiction Acts (section 251, P.H. Act, 1875; the S.J. Acts are of the years 1848, 1879, and 1884: 11 & 12 V. c. 43; 42 & 43 V. c. 49; 47 & 48 V. c. 43). Under those Acts informations are laid for crimes, and complaints for the non-payment of money. Convictions may follow informations, orders are made to enforce complaints. The penalties imposed for criminal offences may be enforced by imprisonment in default of payment or of goods to satisfy a distress warrant; but failure to appear to answer a complaint cannot be enforced by warrant, nor can an order made thereon be enforced by imprisonment except after proof of means on a judgment summons

in the same way as debts are enforced under the Debtors Act, 1869.

By section 6 of the Summary Jurisdiction Act, 1879, when, under any Act, whether past or future, a sum of money claimed to be due is recoverable on complaint to a court of summary jurisdiction, and not on information, such sum shall be deemed to be a civil debt, and if recovered before a court of summary jurisdiction, shall be recovered in the manner in which a sum declared by that Act to be a civil debt recoverable summarily, is recoverable under that Act, and not otherwise. And the payment of any costs ordered to be paid by the complainant or defendant in case of any such complaint, are to be enforced in like manner as such civil debt and not otherwise. By section 35, any sum declared by the Act or by any future Act to be a civil debt which is recoverable summarily, or in respect of the recovery of which jurisdiction is given by such Act to a court of summary jurisdiction, shall be deemed to be a sum for payment of which a court of summary jurisdiction has authority by law to make an order on complaint in pursuance of the Summary Jurisdiction Acts.

By section 39, Summary Jurisdiction Act, 1879—

“ In summary proceedings —

“(1.) The description of any offence in the words of the Act or bylaw creating the offence, or in words to like effect are sufficient in law.”

“(2.) Any exception, exemption, proviso, excuse, or qualification, whether it does or does not

accompany in the same section, the description of the offence in the Act or byelaw creating the offence may be proved by the Defendant, but needs not be specified or negatived on the information or complaint, and if so specified or negatived no proof in relation to the matter so specified or negatived shall be required on his part of the informant or complainant."

Where an offence is proved the Court may, if they deem it of a trifling matter, discharge the accused without punishment (section 16, S.J. Act, 1879).

Informations and complaints must be laid within six calendar months from the time when the matter of complaint arose (section 11, S.J. Act, 1848). Not the "recovery" of the penalty or money by judgment of the Court.<sup>1</sup> In computation of this period the day on which the offence was committed is excluded.<sup>2</sup> The six months runs from the commission of an offence, not from the discovery of it, but where a continuing offence is committed, as by emission of black smoke from a chimney, or the failure of an officer to render accounts, the limitation of time does not run from the first occurrence of the offence; and by section 158, P.H. Act, 1875, where the beginning or execution of any work is an offence in respect whereof the offender is liable under any byelaw to a penalty, the existence of the work during its continuance in such a form and state as to be in contravention of the byelaw

<sup>1</sup> *Morris v. Duncan*, 1898, 47 W.R. 96.

<sup>2</sup> *Rudcliffe v. Bartlemen*, 1891, 40 W.R. 63.

shall be deemed to be a continuing offence, but a penalty shall not be incurred in respect thereof after the expiration of one year from the day when the offence was committed, or the byelaw broken. Section 183 of the same Act confers a power on District Councils by byelaws made under the Act, to impose reasonable penalties for breaches thereof, not exceeding five pounds for each offence, and in the case of a continuing offence a further penalty not exceeding forty shillings for each day of its continuance after written notice thereof from the Council.

The provisions of the Towns Police Clauses Act, 1847, are for the purpose of regulating the following matters within Urban Districts, incorporated with the Public Health Acts (section 171, P.H. Act, 1875) :—

- (1.) Obstructions and nuisances in streets.
- (2.) Fires.
- (3.) Places of public resort.
- (4.) Hackney carriages.
- (5.) Public bathing.

Section 253 of the Public Health Act, 1875, provides that—

“ Proceedings for the recovery of any penalty under this Act shall not, except as in this Act is expressly provided, be had or taken by any person other than by a party aggrieved or by the local authority of the district in which the offence is committed, without the consent in writing of the Attorney-General: Provided that such consent shall not be required to proceedings which are by the provisions of the Act relating

to nuisances or offensive trades authorised to be taken by a local authority in respect of any act or default committed or taking place without their district, or in respect of any house, building, manufactory or place situated without their district."

This restriction does not embrace prosecutions under the Towns Police Clauses Act. Any one may lay an information for offences under that Act although he is neither a party aggrieved nor authorised by the District Council.<sup>1</sup> When penalties are recovered pursuant to powers conferred by the Public Health Acts, half thereof goes to the informer and half to the council of the district in which the offence was committed. If a District Council prosecute, the whole of the penalty is to be paid to their treasurer to be carried to the district fund account (section 254, P.H. Act, 1875).

### OBSTRUCTIONS AND NUISANCES IN STREETS.

Many of the offences mentioned in sections 21 to 29 of the Town Police Clauses Act, 1897, are punishable under the Highway Acts and the Vagrant Acts. By section 21 the Council is empowered to give directions to the police acting within the Urban District to compel the adherence to a particular route by traffic in any case when streets are liable to be obstructed; and orders regulating routes during hours of Divine Service may be

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<sup>1</sup> *Jobson v. Henderson*, 1900, 82 L.T. 260.

enforced. The Council are empowered to purchase land for site of a pound, and for impounding stray cattle, and, if animals impounded are unclaimed after seven days' notice, they may be sold to satisfy a penalty not exceeding forty shillings, and expenses of impounding and keeping them (sections 24 to 27). Cattle includes horses, asses, mules, sheep, goats, swine, cows, bullocks, and heifers.<sup>1</sup> A penalty of five pounds attaches to the offence of releasing animals which have been lawfully impounded. In section 28 offences of common occurrence are enumerated.

"Every person who in any street to the obstruction, annoyance, or danger of the residents or passengers, commits any of the following offences, shall be liable to a penalty not exceeding forty shillings for each offence, or in the discretion of the justices, may be committed to prison, there to remain for a period not exceeding fourteen days; and any constable shall take in custody, without warrant, and forthwith convey before the Justices any person who, within his view, commits any such offence."

The words "*obstruction, annoyance, or danger*" restrict the application of section 28 to cases in which the act charged can obstruct, annoy, or be dangerous to residents or passengers.<sup>2</sup> It is not necessary to call as a witness a passenger or resident.<sup>3</sup> But the information must state against which the offence has been committed.<sup>4</sup> But where shouting

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<sup>1</sup> R. v. Gee, 1885, 49 J.P. 212, 243.

<sup>2</sup> Stimson v. Browning, 1866, 35 L.J. 152.

<sup>3</sup> Reed v. Perret, 1876, 1 Ex.D. 349.

<sup>4</sup> Cotterill, v. Lempre, 1890, 24 Q.B.D. 631.

news, noises which do not necessarily involve a general annoyance are charged as an offence, there should be proof that some passenger or resident was annoyed.<sup>1</sup> Annoyance to one person is enough to support a conviction.<sup>2</sup>

"Every person who exposes for show, hire, or sale (except in a market, or market-place, or fair lawfully appointed for that purpose), any horse or other animal, or exhibits in a caravan or otherwise any show or public entertainment, or shoes, bleeds, or farries any horse or animal (except in cases of accident) or cleans, dresses, exercises, trains or breaks, or turns loose any horse or animal, or makes or repairs any part of any cart or carriage (except in cases of accident where repair on the spot is necessary."

Where the Council fix an area as a market-place for holding a cattle market, animals must not be placed or exercised for purpose of sale outside its bounds.<sup>3</sup> Tho sea-shore is not a street for the purposes of this enactment.<sup>4</sup> Persons who own the herbage on the roadside are not offenders by turning their animals loose thereon. Where cattle being driven along a highway, trespass on adjoining unfenced land, the landowner bears the loss when the animals are removed in a reasonable time. The like rule applies to streets in a market town. A shop-keeper has no remedy for loss caused by intruding animals unless there has been negligence about controlling them during their passage.<sup>5</sup>

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<sup>1</sup> *Stanley v. Farndale*, 1892, 56 J.P. 709.

<sup>2</sup> *Innes v. Newman*, 1894, 2 Q.B. 293.

<sup>3</sup> *Fox v. Palmer*, 1858, 22 J.P. 449.

<sup>4</sup> *Heatherton v. Watson*, 1880, 7 Court of Sess. Cases, 1th Ser. 5.

<sup>5</sup> *Tillett v. Ward*, 1882, 10 Q.B.D. 17.

“ Every person who suffers to be at large any unmuzzled ferocious dog, or sets on or urges any dog or other animal to attack, worry, or put in fear any person or animal.

“ Every owner of any dog who suffers such dog to go at large, knowing or having reasonable ground for believing it to be in a rabid state, or to have been bitten by any dog or other animal in a rabid state.

“ Every person who, after public notice given by any Justice directing dogs to be confined on account of suspicion of canine madness, suffers any dog to be at large during the time specified in such notice.”

Where a dog bites a human being the owner is not responsible unless the mischievous propensity of the dog was previously known; but he is liable in damages for any injury to cattle or sheep committed by his dog, although it has not shown any propensity to attack animals (the Dogs Act, 1865). The occupier of premises where a dog is kept is deemed to own the dog, unless he proves that the dog is not his, and was there without his knowledge or sanction. The Dogs Act, 1871, empowers a constable to take possession of stray dogs, which he supposes to be savage or dangerous, and he may detain it until the owner claims it and pays all expenses incurred. Unclaimed dogs may be sold or destroyed after five days' detention. Justices may order dangerous dogs to be kept under control or destroyed. “ Under control ” is a question of fact to be decided by the Justices. An unmuzzled dog which is not led is not under control.<sup>1</sup> Orders may be issued by the Justices

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<sup>1</sup> *Ex. p. Hay*, 1886 3 T.L.R. 24.



placing restrictions upon dogs being at large where there is danger from mad dogs.

The Diseases of Animals Act, 1894, empowers the Board of Agriculture to issue orders for the muzzling of dogs, and for their seizure, detention, and disposal, and the recovery from the owners of dogs of expenses incurred about detention (*see* the Rabies Order, 1895). The penalty for keeping a dog above six months old, without a licence in force, is 5*l*. An owner must prove that his dog is under age. Upon request of the police the licence must be produced, but inability to produce by reason of omission to carry a license about is not a refusal to produce, which involves a penalty. Dogs used by blind persons may be kept without a licence, and a certificate of exemption is issued for shepherds' dogs when the prescribed declaration has been made (the Dog Licenses Act, 1867).

Every person who slaughters or dresses any cattle, or any part thereof, except in the case of any cattle overdriven which may have met with any accident, and which for the public safety or other reasonable cause, ought to be killed on the spot.

The Injured Animals Act, 1894, empowers the police on a certificate of a veterinary surgeon, to order the slaughter of horses, mules, or asses which are so severely injured that they cannot, without cruelty, be led away.

"Every person having the care of any waggon, cart, or carriage who rides on the shafts thereof or who without

having reins, and holding the same, rides upon such waggon, cart, or carriage or on any animal drawing the same, or who is at such a distance from such waggon, cart, or carriage as not to have due control over every animal drawing the same, or who does not, in meeting any other carriage, keep his waggon, cart, or carriage to the left or near side, or who, in passing any other carriage, does not keep his waggon, cart, or carriage on the right or off side of the road (except in cases of actual necessity, or some sufficient reason for deviation), or who, by obstructing the street, wilfully prevents any person or carriage from passing him, or any waggon, cart, or carriage under his care.

“ Every person who at one time drives more than two carts or waggons, and every person driving two carts or waggons, who has not the halter of the horse in the last cart or waggon securely fastened to the back of the first cart or waggon or has such halter of a greater length from such fastening to the horses head than four feet.

“ Every person who rides or drives furiously any horse or carriage, or drives furiously any cattle.”

The rule of the road is not so absolute as to make the left always the proper side.

If a driver is on the left side and sees a horse coming furiously on the wrong side of the road, he should give way to avoid an accident.<sup>1</sup> Driving on the wrong side of the road does not justify careless driving by others. Due care must always be taken to avoid an accident.<sup>2</sup> The rule applies to saddled horses, and to bicycles.<sup>3</sup> Cyclists who overtake carriages, horses, or foot passengers proceeding along a carriageway must, before passing them, sound a

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<sup>1</sup> *Finegan v. L. & N.W.R.*, 53 J.P. 663.

<sup>2</sup> *Clay v. Wood*, 1803, 8 R.R. 827.

<sup>3</sup> *Taylor v. Goodwin*, 1879, 4 Q.B.D. 228.

bell or whistle or otherwise give audible and sufficient warning of his approach, sec. 85, L.G. Act, 1888.

Under this section furious riding as well as furious driving is an offence. The words in section 78 of the Highway Act, 1835, restricts its application to driving of carriages, or riding on horses drawing them; but it has been construed in order to avoid manifest absurdity to include furious riding.<sup>1</sup>

“Every person who causes any public carriage, sledge, truck, or barrow, with or without horses or any beast of burden to stand longer than is necessary for loading or unloading goods, or for taking up or setting down passengers, except hackney carriages and horses licensed to stand for hire, and every person who by means of any cart, carriage, sledge, truck, or barrow, or any animal or other means wilfully interrupts any public crossing, or wilfully causes any obstruction in any public footpath or other public thoroughfare.”

The words “other means” do not apply to persons who do not use a carriage, &c. to obstruct. Walking abreast so as to oblige passengers to go off the pavement is not an offence under this section;<sup>2</sup> but such an obstruction is embraced by the general clause in section 72, Highway Act, 1835. This clause does not apply to a mews and other places dedicated to the public subject to trade restrictions.<sup>3</sup>

To suffer trees to grow over a highway is not a wilful obstruction;<sup>4</sup> but any unreasonable use of it

<sup>1</sup> *Williams v. Evans*, 1876, 1 Ex.D. 227.

<sup>2</sup> *R. v. Long*, 1888, 59 L.T. 33.

<sup>3</sup> *Chelsea v. Stoddard*, 1879, 43 J.P. 782.

<sup>4</sup> *Walker v. Horner*, 1875, 1 Q.B.D. 4.

is an obstruction, *e.g.*, to leave a horse and cart standing by the roadside.<sup>1</sup>

This enactment has been deemed to apply only to persons who by their acts cause an obstruction, but if they are notified of an obstruction resulting from their default to maintain their property, it seems that neglect to remove the obstruction is an offence, *e.g.*, where an owner is notified that his fence has fallen across a road.<sup>2</sup>

“ Every person who causes any tree or timber or iron beam to be drawn in or upon any carriage, without having sufficient means of safely guiding the same :

“ Every person who leads or rides any horse or other animal, or draws or drives any cart or carriage, sledge, truck, or barrow upon any footway of any street, or fastens any horse or other animal so that it stands across or upon any footway :

“ Every person who places or leaves any furniture, goods, wares, or merchandise, or any cask, tub, basket, pail, or bucket, or places or uses any standing-place, stool, bench, stall, or showboard on any footway, or who places any blind, shade, covering, awning, or other projection over or along any such footway, unless such blind, shade, covering, awning, or other projection is eight feet in height at least in every part thereof from the ground.

“ Every person who places, hangs up, or otherwise exposes to sale any goods, wares, merchandise, matter, or thing whatsoever, so that the same project into or over any footway, or beyond the line of any house, shop, or building at which the same are so exposed, so as to obstruct or incommode the passage of any person over or along such footway.”

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<sup>1</sup> Harris v. Mobbs, 1878, 3 Ex.D. 268.

<sup>2</sup> Gully v. Smith, 1883, 12 Q.B.D. 121.

In prosecutions against tradesmen for plaeing their goods on the space or projecting of the space contiguous to their premises they often set up the continuance of the practice to warrant it, but where the origin of the user is known it affords evidence of an encroachment not of an ancient right.<sup>1</sup>

“Every person who rolls or carries any cask, tub, hoop, or wheel, or any ladder, plank, pole, timber, or log of wood, upon any footway, except for the purpose of loading or unloading any cart or carriage, or of crossing the footway :

“Every person who places any line, cord, or pole across any street, or hangs or places any clothes thereon :

“Every common prostitute or nightwalker loitering and importuning passengers for the purpose of prostitution :

“Every person who wilfully and indecently exposes his person :

“Every person who publiely offers for sale or distribution, or exhibits to public view, any profane, indecent, or obscene book, paper, print, drawing, painting, or representation, or sings any profane or obscene song, or ballad, or uses any profane or obscene language :

“Every person who wantonly discharges any firearm, or throws or discharges any stone or other missile, or makes any bonfire, or throws or sets fire to any firework :

“Every person who wilfully and wantonly disturbs any inhabitant, by pulling or ringing any door bell, or knocking at any door, or who wilfully and unlawfully extinguishes the light of any lamp :

“Every person who flies any kite, or who makes or uses any slide upon ice or snow :

“Every person who cleanses, hoops, fires, washes, or sealds any cask or tub, or hews, saws, bores, or cuts any timber or stone, or slacks, sifts, or screens any line :

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<sup>1</sup> See *Davis v. Harvey*, 1887, 3 T.L.R. 800.

“ Every person who throws or lays down any stones, coals, slate, shells lime, brieks, timber, iron, or other materials (except building materials so inclosed as to prevent mischief to passengers) :

“ Every person who beats or shakes any carpet, rug, or mat (except door mats, beaten or shaken before the hour of eight in the morning) :

“ Every person who fixes or places any flower-pot or box, or other heavy article, in any upper window without sufficiently guarding the same against being blown down.

“ Every person who throws from the roof or any part of any house or other building any slate, brick, wood, rubbish, or other thing except snow thrown so as not to fall on any passenger :

“ Every occupier of any house or other building or other person who orders or permits any person in his service to stand on the sill of any window, in order to clean, paint, or perform any other operation upon the outside of such window, or upon any house or other building within the said limits, unless such window be in the sunk or basement storey :

“ Every person who leaves open any vault or cellar, or the entrance from any street to any cellar or room underground, without a sufficient fence or handrail, or leaves defective the door, window, or other covering of any vault or cellar, or who does not sufficiently fence any area, pit, or sewer, left open, or who leaves such open area, pit, or sewer, without a sufficient light after sunset to warn and prevent persons from falling thereinto :

“ Every person who throws or lays any dirt, litter, or ashes, or nightsoil, or any carrion, fish, offal, or rubbish, on any street, or causes any offensive matter to run from any manufactory, brewery, slaughter-house, butcher's shop, or dung hill, into any street ; Provided always that it shall not be deemed an offence to lay sand or other materials in any street in time of frost to prevent accidents, or litter or other suitable materials to prevent the freezing of water in pipes, or in case of sickness to prevent noise, if the party laying any such

things causes them to be removed as soon as the occasion for them ceases :

“ Every person who keeps any pigsty to the front of any street, not being shut out from such street by a sufficient wall or fence or who keeps any swine in or near any street so as to be a common nuisance.”

The majority of the offences referred to may be also dealt with under the Vagrant Acts. To ring house bells violently at night is not warranted because the offender has been ordered to deliver papers at the house, and, generally, a claim of right does not oust the power of Justice to deal with offences in places which they find in fact to be streets.<sup>1</sup>




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<sup>1</sup> Reg. v. Young, 1883, 47 J.P. 619.

## CHAPTER 28.

## FIRES.

*Escapes—Parish Councils—Towns Police Clauses Act, 1847—Hiring Brigades—The Volunteer Brigade—Expenses of Extinguishing Fires—Authority of the Captain—Uniforms—Accidents—Swamping—Fire-plugs.*

The Public Health Acts do not empower District Councils to compel owners to provide any means of escape from fires in lofty buildings, nor to make byelaws with respect thereto. Modern modes of erecting dwelling-houses one over the other in blocks suggest that an amendment of those Acts in this matter is desirable. In the Metropolis storeys in buildings over 60 feet high cannot be occupied until the County Council have issued a certificate that means of escape from fire has been provided at the top of such buildings.

The provisions of the Towns Police Clauses Act, 1847, with respect to fires are incorporated with the Public Health Act for the purpose of extinguishing fires in Urban Districts.

In a Rural Parish the Parish Council are empowered by section 6 (ii) Local Government Act,



1894, pursuant to section 29, Poor Law Amendment Act, 1867, or section 44 of the Lighting and Watching Act, 1833, to provide fire engines and escapes, and the Parish Fire Engines Act, 1898, enables Parish Councils to agree with the Council of any neighbouring district that any fire-engines and firemen provided by the Council of that district shall be used for extinguishing fires in the Rural Parish; and in such case the owner of the premises where the fire occurs does not become liable for the expenses incurred about the extinguishment of it as he would otherwise do where the fire brigade of an Urban Authority are sent beyond the limits of the Urban District.

Sections 32 and 33 of the Towns Police Clauses Act, 1847, are as follows :—

“32. The Council may purchase or provide engines for extinguishing fires, and fire-escapes, and may purchase, keep, or hire, such horses for drawing such engines as they think fit, and may build, provide, or hire places for keeping such engines, and may employ a proper number of persons to act as firemen, and make such rules for their regulation as they think proper, and give such firemen and other persons such salaries and such rewards for their exertions in cases of fire as they think fit.

“33. The District Council may send such engines and the firemen beyond the limits of their district for extinguishing fire in the neighbourhood of their district.

“And the owner of the premises where such fire shall have happened shall in such case defray the actual expense which may be thereby incurred, and shall also pay to the District Council a reasonable charge for the use of such engines and for the attendance of the firemen.

“And in case of any difference between the District Council and the owner of the premises, the amount of the said expenses and charge, as well as the propriety of sending the engines and firemen as aforesaid for extinguishing such fire (if the propriety thereof be disputed) shall be determined by two Justices, whose decision shall be final; and the amount of such expenses and charge shall be recovered by the District Council as damages.”

Section 32 enables a District Council to provide engines by hiring them.<sup>1</sup>

The expenses incurred about employment of the Brigade within the Urban District fall upon the rate-payers. The owners of the premises are not liable for expenses where their own brigade attend.<sup>2</sup> Tenants from year to year are in no case liable for such expenses.<sup>3</sup>

When the Brigade enter premises on fire they are entitled to exclude therefrom all persons whose presence may interfere with their operations,<sup>4</sup> although the Brigade are under no absolute duty to take possession of the premises; if they do and by reason of the negligent supervision of the officers the firemen steal goods the District Council may be held responsible.<sup>5</sup>

The Captain of the Brigade has authority to summon a Volunteer Fire Brigade for help to extinguish a fire, and the District Council are responsible for the charges made by the Volunteer Brigade for their

<sup>1</sup> *James v. Staines* U.D.C., 1900, 83 L.T. 426.

<sup>2</sup> *Bridlington L.B. v. Bower*, 1873, 22 W.R. 165.

<sup>3</sup> *Sale v. Phillips*, 1894, 1 Q.B. 349.

<sup>4</sup> *Carter v. Thomas*, 1893, 1 Q.B. 673.

<sup>5</sup> *Joyce v. Met. B. of W.*, 1881, 44 L.T. 811.

services,<sup>1</sup> but if such Volunteers negligently swamp property the owners cannot support an action against the Council.

Where the water supply of a district is furnished by a company pursuant to a Special Act and the Waterworks Clauses Act, 1847, they are required to provide and maintain fire-plugs in their mains at the request of the District Council, and in such cases to keep a sufficient supply of water constantly laid on, for cleansing the sewers and drains, for cleansing and watering the streets, and for supplying public pumps, baths, or washhouses upon terms to be agreed on or settled by two Justices (10 Vict. c. 17, s. 37), but if the pipes of the Company are of insufficient gauge for the attachment of fire-plugs, the statutory penalty for refusing to fix them cannot be imposed,<sup>2</sup> and if the Company fix the fire-plugs without a request from the District Council they cannot recover the expenses so incurred.<sup>3</sup> Fire-plugs may be used by the Company for their own purposes and by other persons whom they permit to use them.<sup>4</sup>

Section 66, Public Health Act, 1875, imposes on every Urban District Council a duty to cause fire-plugs to be provided and maintained, and to enter into agreement with any person for that purpose, and to mark on the buildings within the streets marks near to the fire-plugs to denote their situation, but

<sup>1</sup> *James v. Staines Dist. Cil.*, 1900, 17 T.L.R. 2.

<sup>2</sup> *Reg. v. Wells Water Co.*, 1886, 55 L.T., 188.

<sup>3</sup> *G.J. Waterworks v. Brentford L.B.*, 1894, 2 Q.B. 735.

<sup>4</sup> *L.C.C. v. East London W. Co.*, 1900, 1 Q.B. 331.

omission by the Couneil or by a Company for failing to provide such plugs or keep such fire-plugs sufficiently charged with water does not render them liable to an action by any person whose premises are consumed by fire which might have been extinguished had the hydrants been effectual.<sup>1</sup>

If a fireman is killed when employed at a fire his family have to commence an action under the Fatal Accidents Act, 1846-64, within six months after the death.<sup>2</sup>

The Brigade may be supplied with uniforms and insurance premiums paid as part of their wages if the Distriet Council think fit, but they cannot substantiate a claim for compensation under the Workmen's Compensation Act, 1897.




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<sup>1</sup> *Atkinson v. Newcastle Waterworks*, 1877, 2 Ex.D. 441.

<sup>2</sup> *Markey v. Tolworth Joint Hospital* D.B. 1900, 2 Q.B. 455.

## CHAPTER 29.

OMNIBUSES, HACKNEY CARRIAGES, AND  
BOATS.

Urban District Councils are empowered to licence to ply for hire within their districts as many hackney carriages as they think fit, and the duration of any such licences or the licences of drivers and conductors continue in force for one year or such less period as may be specified therein.

The Towns Police Clauses Act, 1847, section 38, defines what are to be deemed hackney carriages :—

“Every wheeled carriage, whatever may be its form or construction, used in standing or plying for hire, in any street within the prescribed distance, and every carriage standing upon any street within the prescribed distance, having thereon any numbered plate required by this or the special Act to be fixed upon a hackney carriage, or having thereon any plate resembling or intended to resemble any such plate as aforesaid, shall be deemed to be a hackney carriage within the meaning of this Act; and in all proceedings at law or otherwise the term “hackney carriage” shall be sufficient to describe any such carriage.”

The offence of plying without being licensed must be proved to have been done in a street; a railway approach is not a street although part of it is used

as a public footpath.<sup>1</sup> Proprietors of hackney carriages have to sign an application for every licence and to notify the Council of any change in their abode, and to pay Clerk of the Council for every licence a fee not exceeding five shillings.<sup>2</sup>

Licensed stage coaches and tramcars are exempted from these requirements.

Section 45 relates to the offence of plying for hire without a licence :—

“If the proprietor or part proprietor of any carriage, or any person so concerned as aforesaid, permits the same to be used as a hackney carriage plying for hire within the prescribed distance without having obtained a license as aforesaid for such carriage, or during the time that such license is suspended as herein-after provided, or if any person be found driving, standing, or plying for hire with any carriage within the prescribed distance, for which such license as aforesaid has not been previously obtained, or without having the number of such carriage corresponding with the number of the license openly displayed on such carriage, every such person so offending shall for every such offence be liable to a penalty not exceeding forty shillings.

To convict of an offence it must be proved that the vehicle is a hackney carriage within section 38.<sup>3</sup>

Section 38 means that every wheeled carriage which was in fact used from time to time for the purpose of standing or plying for hire was a hackney carriage within the section, and the effect of the words “used in standing or plying for hire” were not limited to the period of time during which a carriage

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<sup>1</sup> *Jones v. Short*, 1900, 48 W.R. 287.

<sup>2</sup> Sections 39-44, T.P.C. Act, 1847.

<sup>3</sup> *Jones v. Short*, 1900, 48 W.R. 251.

was actually standing or plying for hire. A carriage does not cease to be subject to the Act when it returns to the proprietor's yard and the number is removed.<sup>1</sup>

A driver has to pay one shilling for registration of his licence. He is subject to penalties for refusing without reasonable excuse to drive hirers to any place within the limits of the urban district, and for demanding more than the legal fare, or more than any sum agreed to be paid for the job.

The legal fare may be recovered from hirers who refuse to pay on demand, with cost of summary proceedings; but they cannot be imprisoned in default of payment, or of goods to satisfy a distress.<sup>2</sup>

The Council are empowered to make byelaws for any of the following purposes:—

For regulating the conduct of the proprietors and drivers of hackney carriages plying within the prescribed distance in their several employments and determining whether such drivers shall wear any and what badges, and for regulating the hours within which they may exercise their calling:

For regulating the manner in which the number of each carriage, corresponding with the number of its licence, shall be displayed:

For regulating the number of persons to be carried by such hackney carriages, and in what manner

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<sup>1</sup> *Hawkins v. Edwards*, 1901, 2 K.B. 160.

<sup>2</sup> *R. v. Kerswell*, 1895, 1 Q.B. 1.

such number is to be shown on such carriage, and what number of horses or other animals is to draw the same, and the placing of check strings to the carriages, and the holding of the same by the driver, and how such hackney carriages are to be furnished or provided :

For fixing the stands of such hackney carriages and the distance to which they may be compelled to take passengers, not exceeding the prescribed distance :

For fixing the rates or fares, as well for time as distance, to be paid for such hackney carriages within the prescribed distance, and for securing the due publication of such fares :

For securing the safe custody and re-delivery of any property accidentally left in hackney carriages, and fixing the charges to be made in respect thereof.

Model byelaws have been issued. Plying for hire in any street or place within the district may be forbidden.<sup>1</sup>

The Towns Police Clauses Act, 1889, applies sections 37, 40 to 52, 54, 58, and 60 to 67, of the Act of 1847 to omnibuses ; and empowers the Urban Council to make byelaws for regulating the conduct of proprietors, drivers, and conductors, for securing fitness of the vehicles, to fix stands, to exhibit a list

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<sup>1</sup> Blackpool L.B. v. Bennet, 1859, 28 L.J. M.C. 203.



of fares,<sup>1</sup> and to prohibit touting and blowing on horns. A model series has been issued.

Motor-omnibuses are subject to the regulations made by the L.G. Board under section 5 of the Locomotives on Highways Act, 1896.

Urban District Councils may licence and make byelaws for regulating proprietors, drivers, and conductors of horses, ponies, mules, and asses standing for hire within the district in like manner, and with like incidents and consequences as in the case of proprietors and drivers of hackney carriages.<sup>2</sup>

The owners of pleasure boats and boatmen may be licensed, and when licensed in respect of particular pleasure boats they are subject to penalties for infringement of byelaws, but the use of unlicensed pleasure boats is not prohibited. The Council may regulate the conditions under which a licence may be granted or refused, and as to its duration or revocation. A licence does not remove from a licensee the responsibilities which the law attaches to him for wrongful acts or defaults, or for the employment of incompetent persons, or for the use of an unsafe or insufficiently equipped boat.




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<sup>1</sup> A private bus for using which passengers voluntarily made a donation, was held to be within the prohibition relating to touting, *Cocks v. Mayner*, 1894, 70 L.T. 403.

<sup>2</sup> Section 172, P.H. Act, 1875.

## CHAPTER 30.

## CELLARS AND CELLAR DWELLINGS.

The prohibition of the letting and occupancy of cellars relates to vaults and rooms underground in urban and rural districts built since 1875, or which were not lawfully let or occupied before that time pursuant to the P.H. Act, 1848, and the Sanitary Act, 1866.<sup>1</sup>

A cellar in which any person passes the night is deemed to be occupied as a dwelling. Thus the occupancy as dwellings of new cellars is absolutely prohibited, and conditions are attached by section 72, to the occupancy of old cellar dwellings.

\* “72. It shall not be lawful to let or occupy or suffer to be occupied separately as a dwelling, any cellar whatsoever, unless the following requisitions are complied with (that is to say) :—

“ Unless the cellar is in every part thereof at least seven feet in height, measured from the floor to the ceiling thereof, and is at least three feet of its height above the surface of the street on the ground adjoining or nearest to the same ; and

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<sup>1</sup> Section 71, P.H. Act, 1875.

“ Unless there is outside of and adjoining the cellar and extending along the entire frontage thereof, and upwards from six inches below the level of the floor thereof up to the surface of the said street or ground, an open area of at least two feet and six inches wide in every part : and

“ Unless the cellar is effectually drained by means of a drain, the uppermost part of which is one foot at least below the level of the floor thereof ; and

“ Unless there is appurtenant to the cellar the use of a watercloset, earthcloset, or privy, and an ashpit furnished with proper doors and coverings, according to the provisions of this Act ; and

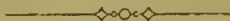
“ Unless the cellar has a fireplace, with a proper chimney or flue, and an external window of at least nine superficial feet in area clear of the sash frame, and made to open in a manner approved by the surveyor (except in the case of an inner or back cellar, let or occupied along with a front cellar as part of the same letting or occupation, in which case the external window may be of any dimensions, not being less than four superficial feet in area clear of the sash frame).

“ Provided that in any area adjoining a cellar there may be steps necessary for access to such cellar, if the same be so placed as not to be over, across, or opposite to the said external window, and so as to allow between every part of such steps and the external wall of such cellar a clear space of six inches at the least, and that over or across any such area there may be steps necessary for access to any building above the cellar to which such area adjoins, if the same be so placed as not to be over, across, or opposite to any such external window.”

Building byelaws usually provide that the ceiling of rooms in the basement are to be 3 feet above the level of the adjoining street.

Persons who let or occupy, or knowingly suffer to be occupied for hire any cellar, are liable to a penalty of twenty shillings for every day during which the offence is continued after notice in writing has been given by the District Council.

After two convictions within the period of three months the Justices may make an order for closing the premises.



## CHAPTER 31.

## BURIALS.

## THE BURIAL ACT, 1900.

*Churchyards — Cremation — Exhumation — The Burial Act, 1890—Registration—The provision of Cemeteries—Fees—Chapels—Mortuaries—Burials in Churches—The Burial Acts, 1852–1885 — The Burial Board — Disused Burial Grounds—Expenses—The Joint Committee—The Election.*

The extent of repeal of various sections of the Burial Acts, 1852 to 1885, by the Burial Act, 1900, is worthy of attention. Hitherto, no part of a burial ground could become a parish burial ground until such time as the Bishop of the diocese appointed, hereafter any burial ground provided under the Burials Acts becomes at once parochial. The clauses of section 32 of the Act of 1852, which relate to fees, are repealed. The laws of sanitation are now more manifest in burial legislation than the Ecclesiastical Canons. The Churchyard dates from the time of Gregory the Great, who, in 750 A.D., directed spaces of ground adjoining churches to be enclosed, consecrated, and appropriated to the burial of parishioners.

By the custom of England any person may be buried in the churchyard of the parish<sup>1</sup> where he dies, and every householder in whose house a dead body lies is bound to inter the body decently. But to burn a dead body, instead of burying it, is not a misdemeanour, unless it is so done as to be a public nuisance, or in order to prevent the coroner from holding an inquest.<sup>2</sup> The disposal of dead bodies of criminals has been dealt with by several Acts, and "the supply of human bodies for anatomical examination" was first regulated in 1832 by 2 & 3 Will. 4. c. 75, which enables "any executor or other party having lawful possession of the body of any deceased person to permit the body to be dissected." The business of "the resurrection man" was unlawful.<sup>3</sup> Five years before the Anatomy Act it was held to be a misdemeanour to disinter a body for the purpose of dissection, and it has since been held that the disinterment of a body without lawful authority, even for a laudable purpose, is a misdemeanour.<sup>4</sup>

Dead bodies cast on shore from the sea, or found in tidal or navigable waters, are to be buried by the Overseers, and their expenses are to be repaid by the treasurers of the county (48 Geo. 3. c. 75; 49 & 50 Vict. c. 20). Paupers are buried in the parish in which their deaths occur, unless at the request of relations, they are buried in the parish to which

<sup>1</sup> A parish in the early centuries co-extensive with a diocese.

<sup>2</sup> *Q. v. Price*, 1884, 12 Q.B.D. 247.

<sup>3</sup> *O. R. v. Lynn*, 2 T.R. 738.

<sup>4</sup> *R. v. Sharpe*, 1856, 1 D. & B. 160.

they were chargeable (7 & 8 Vict. c. 101). Where burials are at the expense of a union, hospital, or infirmary, a compensation fee not exceeding one shilling is payable to the incumbent of the parish from which the body is removed. Burial Act, 1852, section 49 ; Burial Act, 1853, section 7.

Bodies may be exhumed for the purpose of removal from one consecrated place of burial to another, by virtue of a faculty issued by the Bishop's authority, or in obedience to a coroner's order for the purpose, or of viewing the body by the jurors of the inquest, or by order of the High Court of Justices, of which the judges are coroners by virtue of their office, and by the licence of the Home Secretary.

The Burial Act, 1853, provided for the closing of places of burial in towns for the protection of public health. At that time, cemeteries were provided by companies under a special Act, incorporating the provisions of the Cemeteries Clauses Act, 1847. This Code Act is incorporated with the Public Health (Interments) Act, 1879, which empowers—

“(2.) A Local Authority to acquire, construct, and maintain a cemetery either wholly or partly within or without their district, subject as to works without their district for the purpose of a cemetery to the provisions of the principal Act, as to sewage works by a Local Authority without their district.

“(3.) A Local Authority to accept a donation of land for the purpose of a cemetery, and a donation of money or other property for enabling them to acquire, construct, or maintain a cemetery.”

The Burials Act, 1900, which comes into force with the 20th century, will end the distinction between the Cemetery Acts and the Burial Acts; the former ignore parochial ties, the latter recognise parochial and ecclesiastical interests. This Act transfers to the Local Government Board the powers and duties of the Home Secretary, relating to the use and sanitation of burial grounds under seven Burial Acts, passed from 1852 to 1871, leaving with the Secretary of State control over matters ecclesiastical, and his power to licence exhumation of a body interred in a place of burial (Burial Act, 1857, section 25).

The Home Secretary will supervise all fees paid in respect of services rendered by any minister of religion or sexton; the Local Government Board will fix the payments for interments in burial grounds, and for exclusive right of burials in vaults, and the right to erect monuments. (Schd. 1, Bl. Act, 1900; section 7, Bl. Act, 1855; section 34, Bl. Act, 1852). The Local Govt. Board, who will hereafter make Orders in regard to the discontinuance of burials, the closing and opening of burial grounds, are invested with powers of inspection and regulation and generally with powers to act whenever the public health is endangered. Section 7 of the Burial Act, 1900, is as follows:—

“7. The incumbent of any ecclesiastical parish situate wholly or partly within the area for which a burial ground is provided under the Public Health (Interments) Act, 1879,



shall with respect to his own parishioners, and persons dying in his parish, be under the same obligation to perform funeral services in that burial ground as he is to perform funeral services in a burial ground provided under the Burial Acts, and the power of the burial authority to appoint a chaplain for a burial ground provided under the Public Health (Interments) Act, 1879, shall cease, and where there is no chaplain for a burial ground so provided, burials in the consecrated part of the ground shall be registered in like manner, and subject to the like provisions as burials in the unconsecrated part."

Entries in register-books for burials in consecrated ground have hitherto been made by the chaplain and transcripts are sent from time to time to the registrar of the diocese, Cemeteries Cl. Act, 1847, section 32. Registration of Burials dates from 1538 when Parish Registers came into use. In the Visitations of 1558 the incumbent was directed to make a true presentment of the number of persons who died within the parish during the past year. For registration of burials in the unconsecrated ground an officer is appointed pursuant to the Registration of Burials Act, 1864, and copies are sent to the same registrar. .

By section 28, Births and Deaths Registration Act, 1874, a District Council can require the Registrar of Births and Deaths to supply returns of the deaths registered within their district. The Registrar-General has issued a form for weekly returns. A fee of twopence for each entry is due to the Registrar. A Council, urban or rural, can pay a reasonable sum to the clerk to the guardians for copies of the returns of pauper sickness.

## CEMETERIES.

Where it becomes necessary in the interests of the public health that a cemetery should be provided in any district, the Local Government Board may make a compulsory order for the District Council to provide one. A crowded churchyard, injurious effects to water supply, or density of population, would warrant the interference of the Local Government Board. The Council must be guided by the reports of the Medical Officer about the state of the existing burial grounds. The cemetery may be within or without the district, in the latter case public notice must be given, and if objection is made a local inquiry is held before the Local Government Board's sanction can be given. A cemetery is not to be nearer to a dwelling-house than two hundred yards, except with the consent in writing of the owner, lessee, and occupier (section 10, C. Cl. Act, 1847). The site of the house is the space covered by it, not the space within the curtilage.<sup>1</sup>

The Council can borrow to defray the cost of providing a cemetery or charge all expenses of providing and maintaining on the general district rate in an Urban District. In a Rural District these expenses are general unless the cemetery is provided for a separate parish or area when the expenses are special.

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<sup>1</sup> Wright v. Wallasey, 1877, 3 T.L.R. 525.

The District Council fix the charges they make for burials, and manage the cemetery by the grave-diggers and servants they employ, who should be furnished with definite instructions as to the discharge of their duties both in regard to the preservation of order and the fixing of grave spaces, their dimensions and separation by a sufficient thickness of undisturbed earth. Penalties may be imposed for breach of byelaws. A model series of byelaws has been issued by the Local Government Board, and a memorandum on the sanitary requirements of cemeteries. Any class of persons may be refused admission to a cemetery.<sup>1</sup>

Under the Burial Acts the charges for burials are subject to the control of the L.G. Board.

The District Council may build such chapels in the cemetery for the performance of burial services as they may think fit, and lay out and embellish the grounds of the cemetery. The buildings and fences must be kept in complete repair. A portion of the cemetery may be set apart for burials according to the rites of the Established Church, and the bishop of the diocese, on the application of the District Council, may consecrate the portion so set apart.

A chapel, to be approved by the bishop, may be built on the consecrated part for the performance of the burial service of the Established Church, at the request and cost of that denomination or of any other,

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<sup>1</sup> *Martin v. Wyatt*, 1883, 48 J.P. 215.

on the ground appropriated to their use (section 2, Bl. Act, 1900). The Burial Laws Amendment Act, 1880, enables the chaplain to officiate in the unconsecrated part of a cemetery or in any building thereon.

The whole or a portion of the unconsecrated part of the cemetery may be set apart as a place of burial for persons not being members of the Established Church, and in any chapel built in such unconsecrated part a burial service may be performed according to the rites of any community other than the Established Church.

The District Council may set apart portions of the cemetery for the purpose of granting exclusive rights of burial therein, and may sell the exclusive right of burial in such portions, and the right of placing any monument or gravestone in the cemetery or any tablet or monumental inscription on the walls of any chapel or other building in the cemetery.

Gravestones erected without warrant may be removed, but where the erection of a gravestone is authorised it cannot be removed because it is not paid for.<sup>1</sup>

The District Council may apply to the bishop to consecrate any part of a cemetery and in their default the Home Secretary can make the application at the instance of residents in the district (section 1, Burial Act, 1900). The obligation to build a chapel on the

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<sup>1</sup> *Sims v. L. Necropolis*, 1885, 1 T.L.R. 584.

consecrated ground ceases, and the District Council may, at the request and cost of residents belonging to any denomination, erect, furnish, and maintain a chapel for funeral services according to the rites of that denomination on the ground appropriated to their use (section 2, Burial Act, 1900). For funeral services the District Council may, at the public cost, erect on unconsecrated ground not set apart for any denomination, a chapel, but it is not to be consecrated nor reserved for the exclusive use of any denomination.

Fees which have been heretofore fixed by the District Council will hereafter require the approval of the Home Secretary; section 3 of the Act of 1900 provides:—

“3.—(1.) Every burial authority shall submit to the Secretary of State a table of fees to be received by them in respect of services rendered by any minister of religion or sexton, and the Secretary of State may approve the table with or without modifications. Provided that such fees shall be of the same amount in respect of burial service in the consecrated and the unconsecrated parts of a burial ground.

“(2.) If the burial authority fail to submit such a table on being requested to do so by the Secretary of State, he may make a table of fees.

“(3.) The fees fixed by the table shall be payable to and collected by the burial authority, together with the other fees payable to them, and shall be paid by the burial authority to the minister or sexton in such manner as may be agreed on, or as in default of agreement may be directed by the Secretary of State.

“(4.) Subject to the provisions of this section, no fee shall be payable to any incumbent of a parish in respect of any right of exclusive burial, or the erection of a monument, or any

other matter whatsoever in any burial ground maintained by a burial authority, except for services rendered by him, and this enactment shall apply to any such fee, which is by law or custom payable to the churchwardens of any parish or to trustees or other persons for any parochial purpose, or for the discharge of any debt or liability, in like manner as it applies to fees payable to an incumbent."

If a Nonconformist minister officiates in the consecrated portion, he is entitled to the burial fee fixed by the District Council, which must be collected by the Council and paid over to the minister. No fee will in such cases be payable to the incumbent of the parish. The incumbent's right to a fee in such cases, which was given him by section 5 of the B.L. Amendment Act, 1880, is abolished by section 3 (4) of the Burial Act, 1900, and is not continued to the existing incumbent for life by the proviso to that subsection, unless (1) the cemetery established by the District Council is "a burial ground attached to or used for the purposes of a parish," and (2) it is laid out and used before the passing of the Act of 1900, both of which conditions must be fulfilled to entitle an existing incumbent to a continuation of the payment of fees "other than for services rendered."

Section 141 P.H. Act, 1875, empowers a District Council to provide a mortuary and to make byelaws for the management and charges for the use of it, and for the burial of bodies received into it.

The Local Government Board, who may require an Urban District Council to provide a mortuary, have issued a set of model byelaws with a plan of a mortuary.

Interments within the walls of churches built within Urban Districts since 1848 are forbidden by 11 & 12 Vict. c. 63, section 33, and the Burial Act, 1857, section 23, empowers the Local Government Board to forbid the continuance of the use of vaults existing in 1857, and the Act of 1853 empowers them to order that no new burial ground shall be opened within an Urban District save with their approval. The interment in an urn below the pavement of a church containing the ashes of a cremated body is not illegal if authorised by a faculty.

#### THE BURIAL ACTS, 1852-1885.

Under the Burial Acts, 1852-1885, a Burial Board could be appointed for any parish by a resolution of the vestry, to provide a burial ground, but since the Local Government Act, 1894, came into force, a Burial Board cannot be formed for any part of an Urban District without the approval of the Council of that district (section 62, L.G. Act, 1894); and where there is a Burial Board in an Urban District it will cease to exist when the District Council pass a resolution for the transference of its powers to them (section 28 L.G. Act, 1894). Then the expenses of the Council incurred in the execution of the Burial Act will be defrayed out of the poor rate (section 67, L.G. Act, 1894). The new authority is to exercise



the powers of the old board, and the same class of ratepayers are to be charged.<sup>1</sup>

If the area which was under a Burial Board in 1894 was partly comprised in an Urban District, and partly in a rural parish or parishes, the powers and duties of the Board were transferred to the Urban District Council and the Parish Council or Councils to be exercised by a joint committee to be appointed by those Councils (section 53, L.G. Act, 1894). Any difference as to the constitution of such committee is to be determined by the Local Government Board and expenses, loans, and receipts for the purposes of the Burials Acts are to be divided in such proportion as the Councils who appoint the Joint Committee agree upon (L.G. Joint Committees Act, 1897).

The members of a Burial Board are elected by the ratepayers of the parish. A Board is elected from the ratepayers, and consists of not less than three nor more than nine persons, of whom one-third retire from office yearly at a time fixed by the vestry. Members may resign office and are re-eligible. The incumbent of the parish does not require a rating qualification (section 11, Burial Act, 1852).

Vacancies are filled up by the appointment of a ratepayer (Burial Act, 1855, section 4). Expenses of taking a poll of ratepayers in contested elections is defrayed by the Board out of the poor rate (Burial Boards (Contested Elections) Act, 1855, section 2).

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<sup>1</sup> K. v. Connah Quay, 1901, 40 W.R. 463.



Loss of rating qualification does not disqualify a member from continuing in office. A Burial Board meets when it pleases.

The Local Government Act, 1858, section 49, re-enacted by Public Health Act, 1875, enabled the vestry of an urban parish to resolve that the District Council should act as a Burial Board, and in such case the expenses incurred under the Burial Acts were to be defrayed out of a rate to be levied in such parish like a general district rate. The Burial Act, 1861, also conferred the power to defray burial expenses in Urban Districts out of the general district rate, or by a separate rate under the name of a burial rate, to be assessed like a general district rate; but where a burial board is elected the expenses of carrying the Burial Acts into execution<sup>\*</sup> are defrayed out of the poor rate (Burial Act, 1852, section 19). Where the District Council act as a Burial Board a surplus income is applied in aid of the general district rate, and the accounts of receipts and expenditure are audited in the same manner as the other accounts of the Council.

Income tax is payable on the surplus income of a Burial Board.<sup>1</sup>

24 & 25 Vict. c. 61, s. 21, empowered the District Council to fence disused burial grounds within the Urban District. The Burial Act, 1855, section 18, imposes on the Burial Board or Churchwardens the

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<sup>\*</sup> *Paddington B.B. v. I.R.*, 1884, 13 Q.B.D. 9.

duty to maintain and fence disused burial grounds or churchyards. The obligation of the churchwardens is transferred in rural parishes to the Parish Council when it is found necessary to defray such expenditure out of the poor rate (section 6 (1) b, L.G. Act, 1894).



## CHAPTER 32.

## OFFICERS OF LOCAL AUTHORITIES.

*Tenure of Office—Quo Warranto—Complaints of their conduct—Defamation—The Clerk—The Treasurer—The Medical Officer of Health—The Surveyor—The Overseers.*

Officers of Urban District Councils hold their appointments "at pleasure." Councils cannot contract themselves out of the Act. The discharge of an officer is generally made a matter for special notice under the regulations of the Council relating to conduct of business, but if those rules are complied with, an officer may be discharged at any time by vote of the Council. The officer's right to his salary accrues from day to day so he can recover his salary to the date of his discharge.

The tenure of office being "at pleasure" there is no remedy available to correct a harsh resolve of the Council. An information in nature of a "*quo warranto*" does not lie in respect of the holding of offices under the Public Health and Local Government Acts. These officers hold at pleasure, that is,

the Council can dismiss them without notice and without assigning any reason.<sup>1</sup> Nor in regard to the office of town clerk ; nor against the clerk of a school board.<sup>2</sup>

Clerks to Justices are removable at pleasure, so an information does not lie for usurping that office.<sup>3</sup> The Clerk of the Peace holds office during good behaviour ; the Justices in Quarter Sessions having power to discharge him from office on a complaint and charge in writing exhibited against him. The office seems permanent, yet *quo warranto* is not the remedy for a clerk of the peace who complains of his dismissal ; if he has any remedy it is by *certiorari* to bring up the order of the Quarter Sessions to quash it.<sup>4</sup>

There is not permanence about the offices of churchwarden or overseer,<sup>5</sup> nor in that of assistant overseer,<sup>6</sup> but a vestry clerk has his duties prescribed by statute, so *quo warranto* is available for the office,<sup>7</sup> and a clerk to the Guardians of the Poor has the like advantage, the guardians cannot dismiss him of their own free will and pleasure.<sup>8</sup> In *Reg. v. Wells*<sup>9</sup> the treasurer of a District Council failed in an application for an information on the ground that the duties of the office were not of that public and substantive

<sup>1</sup> *Ex parte Richards*, 1878, 3 Q.B.D. 368.

<sup>2</sup> *Bradley v. Silvester*, 1871, 25 L.T. 459.

<sup>3</sup> *R. v. Fox*, 1858, 8 E. & B. 939.

<sup>4</sup> *Q. v. Russell*, 1869, 10 B. and S. 91.

<sup>5</sup> *Re Barlow*, 1861, 30 L.J. Q.B. 271.

<sup>6</sup> *Reg. v. Simpson*, 1870, 19 W.R. 73.

<sup>7</sup> *Q. v. Burrows*, 1892, 1 Q.B. 399.

<sup>8</sup> *Reg. v. Guardians of St. Martins*, 1851, 17 Q.B. 149.

<sup>9</sup> 1895, 11 T.L.R. 458.

character required to support a *quo warranto*. The Court also considered that where an office was held at the will of a third party, as of the Local Government Board, who have power to put an end to the employment, it would be a fatal objection to an application for a writ of *quo warranto*.

It is for the public advantage that all matters which may be openly discussed should be fairly communicated to the public. Those who have an interest in a matter are privileged to discuss it with those whose interests are concerned in the matter discussed. Public authorities in respect of powers which come within the scope of the powers entrusted to them, and ratepayers in whose behalf they exercise those powers, are in common concerned in the honest discharge of the duties and liabilities depending thereon. We propose to treat of the right of public discussion in regard to the execution of the duties entrusted to officers of public authorities, and the assertion of legal rights and liabilities which may spring therefrom.

The subject invites a threefold division with regard to :—

- (1) the public authority itself ;
- (2) the members of the authority ;
- (3) the electors and ratepayers ;

and the correlative right of the officers bearing thereon respectively.

The law of defamation is one and the same for all—persons, firms, companies, and corporations ; but

its application differs with regard to the different conditions of the persons asserting it.

A corporate body is not a very vulnerable object for the defamer, be he libeller or slanderer.

"Defamation is the publication with regard to a person of matter which tends in the minds of people of ordinary sense to bring the person into contempt, hatred, or ridicule, or to injure his character."

You may think evil, but you may not publish it ; if you hate a corporate body, assail their personal reputation ; leave their property alone. They have no character ; but they own and have property, and a duty to look sharp after it.<sup>1</sup> They'll be down on you for defaming their title. Denounce "*their scandalous and abominable expenditure, and the regrettable extent to which bribery and jobbery prevails,*" and you'll go scot-free in an action ; but don't run foul of a member, he has a character, and will want damages to soothe him. Avoid writing defamatory matter in all cases ; slang a councillor in regard to unfitness for office, the electors know best, and how can damages accrue by loss of an office which is not one of profit ? An effigy with a tankard, accompanied by an imputation of over-indulgence, might loosen your purse-strings, leave out the effigy, and say : "He's never sober, and is not a fit man for the Council. On the night of the election he was so drunk that he had to be carried home."<sup>2</sup>

<sup>1</sup> *M. of Manchester v. Williams*, 1891, 1 Q.B. 94 ; *Met. Omnibus Co. v. Hawkins*, 1859, 4 H. & N., p. 80.

<sup>2</sup> *Alexander v. Jenkins*, 1892, 1 Q.B. 797.

The Council can manage him at meetings, and he can retort from the platform when he gets a chance.

Statements affecting the competence of public authorities in regard to the performance of their duties may be freely indulged in ; they are not like trading companies, and have not a reputation in the way of business which can be injured.<sup>1</sup>

Thus much everybody may say and do against a public authority ; what may they say and do against their officers ?

The word " malice " has crept into the law of libel. " Malice " means the doing a wrongful act intentionally without just cause or excuse.

Doubt has been thrown on the liability of corporate bodies for defamation, because actual malice or ill-will is not imputable to a corporate body ; but a corporate body can do a wrongful act, and the publication of an untrue statement is actionable, apart from any question of malice, being a wrongful act done in furtherance of their powers,<sup>2</sup> and an officer or any other person would get heavy damages against them.

Take the case of false imprisonment. The Council give some servant authority to take up some person believed to be acting wrongfully ; they are liable if they exercised their authority unreasonably ;<sup>3</sup> and why should not the Council be responsible for a malicious prosecution ? Motives are nothing to do

<sup>1</sup> *S. Hetton Coll. Co. v. N.E. News*, 1894, 1 Q.B. 133.

<sup>2</sup> *Nevill v. Fine Arts Co.*, 1895, 2 Q.B. 156.

<sup>3</sup> *Abrath v. N.E. Ry.*, 1886, 11 A.O. 253.

with it ; if a wrongful act is done with a purpose to injure, no valid ground can be assigned for shielding a corporate body from consequences which flow from their act ; but their liability in this respect is doubted by high authority.<sup>1</sup> Where an order is reasonably given to a servant, and that servant, of ill-will of his own, wickedly acts against any person, there is every reason for protecting the corporate body if proof be given that the servant did in fact act outside the scope of his orders in order to gratify his own ill-will.

In 99 cases out of 100, where the action of a corporate body against its officers is called in question, it is met on the ground of " privilege of occasion " ; that is, that the corporate body who publish the defamatory matter, and those to whom they publish it, have a common interest touching the subject. A common instance of this is afforded by the publication of the grounds of dismissal of a servant by a corporate body in a circular distributed to their servants,<sup>2</sup> and in the case of a local authority, where all rate-payers are interested in the due performance of public duties, a publication to all the world is privileged ;<sup>3</sup> and mere exaggerated language will not destroy the privilege of the occasion ; nor will the purpose to fulfil a moral and social duty create it.<sup>4</sup> But notices with a double meaning should be avoided.

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<sup>1</sup> *Stevens v. M. Ry. Co.*, 1854, 10 Ex. 352.

<sup>2</sup> *Hunt v. G.N. Ry.*, 1891, 2 Q.B. 189.

<sup>3</sup> *Purcell v. Sowler*, 1877, 2 C.P.D. 215.

<sup>4</sup> *Stuart v. Bell*, 1891, 2 Q.B. 341.



In *O'Hea v. Cork Guardians*,<sup>1</sup> the Board came to the conclusion that the conduct of their business was not satisfactory, and determined to change their solicitors. They then published this advertisement :—

“TO SOLICITORS.

“The Board of Guardians will at their next meeting appoint a solicitor, other than their late solicitors, to do all legal business of the Union, &c.”

The late solicitors felt the sting of the words “other than their late solicitors”; said the meaning they bore was “the late solicitors had been guilty of such misconduct, and had exhibited such professional incapacity, that any application from them could not be entertained, because they were incompetent.”

The solicitors failed on the ground that the words used conveyed no libellous imputation, and a supposition that language is intended to convey a hint won't support an action.

Avoid confusing the administration of local affairs with that of justice, or with proceedings in Parliament, which may be published when first investigated although statements may have been made in the course of a trial or a debate affecting the character of private individuals;<sup>2</sup> but to bodies of limited jurisdiction the publicity of their proceedings is not essential to good administration.

Complaints to the Council of the conduct of their officers must be common enough, and often unfounded. It matters little to the officer if the Council, at whose

<sup>1</sup> 1893, 31 L.R. Ir. C.L. 633.

<sup>2</sup> *Wason v. Walter*, 1868, L.R. 4 Q.B. 73.

pleasure he holds office, are satisfied with him, so he can afford to be thick-skinned. Hostile criticism increases his vigilance and makes his tenure of office more secure ; but there are limits to the endurance of abuse, so that a clear knowledge of what constitutes a “privileged occasion” and makes that defence an available protection to a councillor or ratepayer who has wrongfully assailed an officer, will be useful.

Absolute privilege for the publication of defamatory matter attaches to Parliament, the Courts of Justice, and to State affairs ; the qualified privilege, which attaches to public business arises from duty and common interest ; but “*fair comment*” is the due of everybody of good repute.

To make an occasion privileged for the publication of a defamatory statement there must be an interest or duty in common between the person who publishes the statement and the persons to whom it is published. On facts depends privilege, not on the belief of their existence. Establish the interest or duty in common, and then “a communication, made in good faith upon any subject matter in which the person communicating it has an interest or in reference to which he has a duty, is privileged if made to a person having a corresponding interest or duty, although it contains crimimatory matter, which without this privilege would be defamatory and actionable.”<sup>1</sup> A ratepayer’s or councillor’s belief will not create a privilege. He

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<sup>1</sup> Harrison v. Bush, 1855, 5 E. & B. 344.

may be mistaken about the officer's conduct. That is of no moment if the public service is promoted.

A complaint made against an officer should not be discussed at a public meeting of the Council without a previous investigation by a committee. A councillor may read a libel on an officer, he must not publish it.<sup>1</sup> Before a public discussion is held by the Council every officer has a right to have the facts of a complaint against him ascertained by investigation of a committee. Cockburn, C.J., in *Pureell v. Sowler*,<sup>2</sup> said: "The meetings are not necessarily public; the Council have full right to close their doors, and although the public are generally admitted, yet when charges are to be made affecting character the proper course is to close the doors. A preliminary inquiry ought to be carried on with closed doors, and is not fit for a public report." So the medical officer recovered damages. The irregular procedure destroyed the privilege, but where a public investigation before the Council is in due course the presence of reporters or persons other than members of the Council does not destroy the privilege of the occasion.<sup>3</sup> A councillor who addresses the Council is presumed to do so for the purpose of doing his duty; so the officer who complains of any excess of zeal in the councillor has to establish that he has acted for some purpose foreign to public service.<sup>4</sup> Zeal may be no justification where unreasoning prejudice or reckless-

<sup>1</sup> *Forrester v. Tyrrel*, 1893, 57 J.P. 532.

<sup>2</sup> 1877, 2 O.P.D., p. 289.

<sup>3</sup> *Pittard v. Oliver*, 1891, 1 Q.B. 474.

<sup>4</sup> *Clarke v. Molyneux*, 1877, 3 Q.B.D. 237.

ness as to the truth or falsity of the defamatory statement exists.<sup>1</sup>

ACTIONS against publishers of newspapers for publishing defamatory matter uttered at a public meeting are governed by the Libel Amendment Act, 1888, and the Newspaper Libel Act, 1881.

Section 189, Public Health Act, 1875, is as follows :—

“Section 189. Every urban authority shall from time to time appoint fit and proper persons to be medical officer of health, surveyor, inspector of nuisances, clerk, and treasurer : Provided that if any such authority is empowered by any other Act in force within their district to appoint any such officer, this enactment shall be deemed to be satisfied by the employment under this Act of the officer so appointed with such additional remuneration as they think fit and no second appointment shall be made under this Act. Every urban authority shall also appoint or employ such assistants, collectors, and other officers and servants as may be necessary and proper for the efficient execution of this Act, and may make regulations with respect to the duties and conduct of the officers and servants so appointed or employed, subject, in the case of officers any portion of whose salary is paid by a County Council, to the powers of the Local Government Board under this Act, the urban authority may pay to the officers and servants so appointed or employed such reasonable salaries, wages, or allowances as the urban authority may think proper ; and, subject as aforesaid, every such officer and servant appointed under this Act shall be removable by the urban authority at their pleasure.”

A County Council, pursuant to section 24 (2.c) L.G. Act, 1888, pays to every District Council for any area wholly or partly in the county by whom a M.O.H. or inspector of nuisances is appointed, one-half of the salary of such officer where his qualifica-

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<sup>1</sup> Royal Aquarium Co. v. Parkinson, 1892, 1 Q.B. 430.

tion, appointment, salary and tenure of office are in accordance with the regulations made by order under the P.H. Act, 1875.

Where a District Council appoint a M.O.H. half of whose salary is paid by a County Council the tenure of his office depends on the approval of the Local Government Board, and he cannot be removed from office without the assent of the Board;<sup>1</sup> but where the District Council pay the whole of the salary the Board can only prescribe the qualification and duties of the M.O.H.<sup>1</sup>

The resolution of the Council operates as an appointment of an officer.

Every officer entrusted with money has, before entering on the duties of his office, to find sufficient security for the faithful performance of his duty and for duly accounting for all money.<sup>2</sup> He may be called on to account at any time, to furnish vouchers and receipts and pay in balances to the Treasurer. He who fails, within five days after notice, to deliver up all books, accounts, and property of the Council, is liable to be imprisoned for a period not exceeding six months.<sup>3</sup> The Inspector of Nuisances may represent the Council in the duties of Surveyor, but the same person may not hold the offices of Clerk and Treasurer.<sup>4</sup>

<sup>1</sup> General Orders of the L.G. Board as to duties of urban and rural M.O.H., dated 23 March 1891.

<sup>2</sup> Fidelity bonds of a Guarantee Society are frequently accepted. These are often clogged with conditions which tend to defeat their purpose. They should be made to be effectual in case of change of tenure of office or alteration in duties or salary.

<sup>3</sup> Sections 194, 195 and 196, P.H. Act, 1875.

<sup>4</sup> Section 192, *ib.*

*The Clerk.*

The routine duties of the Clerk are subject to the regulations made by the Council. He is entitled to appear before any Court on behalf of the Council and conduct their cases, subject to the regulations of the Court in respect of audience. This duty is personal to the Clerk ; it does not clothe him with the rights of a solicitor. Section 259 P.H. Act, 1875. is as follows :—

“Any local authority may appear before any Court or in any legal proceeding by their clerk, or by any officer or member authorised generally or in respect of any special proceeding by resolution of such authority, and the clerk or any officer or member so authorised shall be at liberty to institute and carry on any proceedings which the local authority is authorised to institute and carry on under this Act.”

Notices from the Council addressed to individuals are authenticated by the Clerk or other officer from whose department they proceed.<sup>1</sup> Public notices should be issued by order of the Council and countersigned by the Clerk. By the Local Board's Accounts Order, 1880, Art. 3,

“The Clerk or other officer duly authorised by the Local Board shall enter from time to time at proper dates in the Minute Book of the Local Board, according to the Form (A.) in the Schedule to this Order, a statement of all orders drawn on the Treasurer, and of all moneys paid or received on behalf of the Local Board, and of all Minutes relating to the allocation or division of charges, or any other pecuniary transaction of the Local Board, and shall insert marginal

<sup>1</sup> Section 266, P.H. Act, 1875.

notes of references to the respective folios of the ledger in which the items relating to any such orders, payments, receipts, or other pecuniary transactions are entered."

### *The Treasurer.*

The office of treasurer to a Public Authority is rarely a paid office; it is a place of profit, for the treasurer can make what use he likes of the money entrusted to his care, but the profit does not arise out of contract, so section 46, Local Government Act, 1894, which prohibits councillors from holding paid offices under the Council, does not defeat the right of a councillor to act as treasurer to the Council of which he is member. A Parish Council can appoint one of their own number to act as treasurer without remuneration. A Town Council cannot do this, section 18, Municipal Corporations Act, 1882, provides that the Borough treasurer is to be a fit person not being a member of the Council. By section 75, Local Government Act, 1888, section 18 of the Municipal Corporations Act, 1882, is to supersede existing enactments with respect to the County treasurer if the County Council so resolve, and if they do not so resolve the appointment is made pursuant to the County Rate Act, 1739, 12 Geo. 2, c. 29, which empowered the Justices of the Peace to appoint a treasurer of the public stock of the County, he to hold office at pleasure, to give sufficient security and to be allowed such reasonable sum of money for his pains not exceeding twenty pounds by the year, as they think fit.



The Acts are not satisfied by the appointment of a banking company as treasurer. He must be a responsible person.<sup>1</sup> In *Cosford Union v. Grimwade*,<sup>2</sup> it was held that a public authority were entitled to recover from the sureties of their treasurer notwithstanding the stoppage of the bank at which he had kept the Union account, provided the public body had not acknowledged the bankers as their own bankers, but in a later case<sup>3</sup> the Public Authority failed to recover the amount lost through failure of a bank, whether the account was their own or that of the treasurer and the court held that the position of an honorary treasurer was analogous to that of a trustee or receiver and he was not responsible for a loss incurred through no default of his own but through the necessary employment of an ordinary mercantile agent.

But if the treasurer who keeps a private account at his bank and a separate one for the moneys of the public authority should become bankrupt the bank would not be entitled to set off one account against the other and the public authority are entitled to recover the balance standing to their treasurer's credit on the public moneys account.<sup>4</sup>

But resort to the banking accounts of a defaulting treasurer is rarely satisfactory. The protection of the ratepayers is to be secured only by taking sufficient security for the faithful execution of his duty by the treasurer and for duly accounting for all moneys

<sup>1</sup> *Re West of England Bank*, 1879, 11 Ch.D. 768.

<sup>2</sup> 1892 (*Local Government Chronicle*, p. 814).

<sup>3</sup> *Colchester Union v. Moy*, 1893, 68 L.T. 564.

<sup>4</sup> *Ex parte Kingston*, 1871, L.R., 6 Ch. 632.



entrusted pursuant to Section 194 Public Health Act, 1875.

*The Medical Officer of Health.*

Sections 190 and 191 P.H. Act, 1875, relate to the appointment of Medical Officers of Health :—

“Section 190. Every rural authority shall from time to time appoint fit and proper persons to be medical officer or officers of health, and inspector or inspectors of nuisances ; they shall also appoint such assistants and other officers and servants as may be necessary and proper for the efficient execution of this Act.

“There may be awarded to the clerk and treasurer of the Guardians of any Union, in respect of the additional duties of such officers under this Act, such remuneration as the rural authority may, with the approval of the Local Government Board, determine. If the clerk of the Union is unable or unwilling to undertake such additional duties, the assistant clerk of the Union shall be appointed to discharge the same, with such remuneration as aforesaid.”

“191. A person shall not be appointed medical officer of health under this Act unless he is a legally qualified medical practitioner ; and the Local Government Board shall have the same powers as it has in the case of a district medical officer of a Union with regard to the qualification appointment duties salary and tenure of office of a medical officer of health or other officer of a local authority any portion of whose salary is paid by a County Council, and may by order prescribe the qualification and duties of other medical officers of health appointed under this Act.

“The same person may, with the sanction of the Local Government Board, be appointed medical officer of health or inspector of nuisances for two or more districts, by the local authorities of such districts ; and the Local Government Board shall by order prescribe the mode of such appointment, and the proportions in which the expenses of such

appointment and the salary and charges of such officer shall be borne by such authorities.

"Any district medical officer of a Union may, with the sanction of the Local Government Board and subject to such conditions as the said board may prescribe, be appointed a medical officer of health; and a medical officer of health may exercise any of the powers with which an inspector of nuisances is invested by this Act.

"In case of illness or incapacity of the medical officer of health a local authority may appoint and pay a deputy medical officer, subject to the approval of the Local Government Board."

### *The Surveyor.*

The office of Surveyor is filled by the District Council, who by their servant perform the duties imposed on them by the Public Health and Local Government Acts.<sup>1</sup> The powers transferred by the Local Government Act, 1894, to Rural District Councils enable them to appoint and remunerate new officers as vacancies arise, and such appointments may be made subject to such regulation as they choose to prescribe. The duties of the Surveyor in regard to preparation of plans and inspection of works are referred to under the subjects to which the duties relate. This officer is usually required to reside within the district and to devote the whole of his time to the duties of his office.

Any person who obstructs any officer employed in obeying or carrying into effect any provisions of the P.H. Acts is liable to a penalty of 5/. A mere

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<sup>1</sup> Section 141, P.H. Act, 1875; Section 25, L.G. Act, 1894.

refusal to admit an officer to premises is an obstruction.<sup>1</sup>

### *Interest in Contracts.*

"Section 193. Officers or servants appointed or employed under this Act by the local authority shall not in any wise be concerned or interested in any bargain or contract made with such authority for any of the purposes of this Act. If any such officer or servant is so concerned or interested, or under colour of his office or employment exacts or accepts any fee or reward whatsoever other than his proper salary wages and allowances, he shall be incapable of afterwards holding or continuing in any office or employment under this Act, and shall forfeit and pay the sum of fifty pounds, which may be recovered by any person, with full costs of suit, by action of debt."

The prohibited interest is one arising out of a contract made with the Council for the purposes of the P.H. Acts, and the receipt of fees, other than salary wages and allowances, is illegal only where they are taken under colour of office. A clerk who prepares contracts for those who contract with the Council, may receive the fees due to him as solicitor for doing such work. To corruptly solicit or receive or agree to receive for himself or any other person any gift, loan, fee, reward, or advantage whatever as an inducement to, or reward for, or otherwise on account of any member, officer, or servant of a public authority doing or forbearing to do anything in respect of any matter or transaction in which that authority is concerned, is a misdemeanour.<sup>2</sup>

Interest in contracts for the sale, purchase, leasing, or hiring of lands or offices, is exempted from section

<sup>1</sup> Section 306, P.H. Act, 1875; *Borrow v. Howland*, 1896, 71 L.T. 787.

<sup>2</sup> Public Bodies Corrupt Practices Act, 1889, 52 & 53 Vict. c. 69.

193, provided that such contract is entered into with consent of two-thirds of the councillors present, at a meeting held after seven clear days notice shall have been published in some local newspaper, and after notice shall have been sent in writing to every councillor stating the nature of the contract and the time and place of the meeting at which the question is to be considered.<sup>1</sup>

A similar exception is made in favour of interests of officers as shareholders in joint stock companies, which contract with a District Council.

Where an illegal interest exists, the knowledge and consent of the Council does not protect the officer from the consequences imposed by the law :<sup>2</sup> A percentage on work done under a contract with the Council tends to cause a conflict between the interest and duty of an officer, whether received secretly or openly ; but the Council can pay their officers for extra work cast on them by reason of contracts which were not contemplated when the officers' salary was fixed.<sup>3</sup>

#### *Overseers.*

In an urban parish overseers of the poor are appointed by the inhabitants in vestry assembled unless the Local Government Board make an order conferring on the Urban District Council the power to appoint overseers and assistant overseers pursuant to section 33, L.G. Act, 1888. In a rural parish the overseers and assistant overseers are appointed by the

<sup>1</sup> Public Health (Members and Officers) Act, 1885, 48 & 49 Vict. c. 53. s. 2.

<sup>2</sup> *Whiteley v. Barley*, 1888, 21 Q.B.D. 154.

<sup>3</sup> *Edwards v. Salmon*, 1889, 23 Q.B.D. 531.

Parish Council, except where one parish happens to be co-extensive with a rural sanitary district, and the Rural District Council direct their precepts for the collection of rates they make in respect of general and special expenses of the rural district to overseers of the parishes comprised within it, pursuant to sections 230, 231, P.H. Act, 1875, which provide :—

“Section 230. For the purpose of obtaining payment from the several contributory places within their district of the sums to be contributed by them, the Council shall issue their precept to the overseers of each such contributory place requiring such overseers to pay, within a time limited by the precept, the amount specified in such precept to the Council or to some person appointed by them, care being taken to issue separate precepts in respect of contributions for general expenses and special expenses, or to make such expenses respectively separate items in any precept including both classes of expenses.

“Where a contributory place is part of a parish, as defined by this Act, the overseers of such parish are deemed to be the overseers of such contributory place, and where any part of a contributory place is part of a parish the overseers of such parish are deemed to be the overseers of such part of such contributory place.

“The overseers comply with the requisition of such precept by paying the contribution required in respect of general expenses out of the poor rate of their respective parishes, and with respect to special expenses by raising the contribution required by the levy (in the case of an entire parish on the whole of such parish, and in the case of a contributory place or part of a contributory place forming part of a parish, by the levy on such place, or such part thereof, exclusive of the rest of the parish) of a separate rate in the same manner as if it were a rate for the relief of the poor, with this exception ; (namely)

“That the owner of any tithes, or of any tithe commutation rentcharge, or the occupier of any land used as arable

meadow or pasture ground only, or as woodlands market gardens or nursery grounds, and the occupier of any land covered with water, or used as a canal or towing-path for the same, or as a railway constructed under the powers of any Act of Parliament for public conveyance, shall, where a special assessment is made for the purpose of such rate, be assessed in respect of one-fourth part only of the rateable value thereof, or where no special assessment is made, shall pay in respect of the said property one-fourth part only of the rate in the pound payable in respect of houses and other property :

“ Provided that where the amount required by any precept or precepts from a contributory place in respect of special expenses is less than ten pounds, or is so small that a rate less than one penny in the pound would be required to raise the same, the overseers shall not assess and levy any special rate for the same, but shall pay the amount as if it formed part of the contribution required from them in respect of general expenses.

“ A separate rate under this section shall, as respects the power of the overseers in relation to making assessing and levying such rate, and as respects the appeal against such rate, and all other incidents thereof except the purposes to which it is applicable, and such exemption as aforesaid and except the allowance of justices, which shall not be required, be subject to the same provisions as apply in law to a rate levied for the relief of the poor ; and the overseers of a parish shall have the same powers of levying such separate rate in a contributory place or part of a contributory place forming part of their parish, as they would have if such contributory place or such part thereof formed the whole of their parish.

“ Where a contribution for general expenses is required from a contributory place or part of a contributory place which is part of a parish, the overseers shall from time to time levy such increase of rate from the contributory place or such part thereof as may be sufficient to recoup the parish for the sum it has paid on account of the contributory place

or such part thereof in respect of general expenses under this Act, and carry the same to the general account of the parish, and such increase of rate shall be raised in such contributory place or part of a contributory place by an addition to the poor rate, or by a separate rate to be assessed made allowed published collected and levied in the same manner as a poor rate.

"The officers ordinarily employed in the collection of the poor rate shall, if required by the overseers, collect any separate rate made under this section, and receive out of such separate rate such remuneration for the additional duty as the overseers with the consent of the vestry may determine.

"The overseers at the expiration of their term of office pay any surplus in their hands arising from any separate rate above the amount for which the rate was made, to the Council or to such person as they may appoint, to the credit of the contributory place within which or within part of which such rate was made and such surplus goes in reduction of the next call that may be made on such contributory place or such part thereof for the purpose of defraying the expenses incurred by the Council.

231. "If the amount required by any precept of a rural authority to be paid by the overseers of any parish is not paid in manner directed by such precept, and within the time therein specified for that purpose, the rural authority shall have the like remedy for recovery from the overseers of such amount as is not paid as guardians have for the time being for recovery from overseers of contributions of parishes, and for that purpose the precept of the rural authority requiring the payment shall be conclusive evidence of the amount thereof."

Where private improvement expenses have been incurred by a Rural Council, they may make and levy a private improvement rate in the same manner as an Urban Council.<sup>1</sup>

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<sup>1</sup> Section 232, P.H. Act, 1875. See *ante* pp. 233-235.



## CHAPTER 33.

## LEGAL PROCEEDINGS.

Informations are laid for the recovery of penalties ; complaints are made for the recovery of sums due to District Councils for works done or for rates made by them pursuant to the Public Health Acts.

The distinction is important. A defendant convicted on information in default of payment of a fine may be imprisoned, whereas failure to comply with an order made on complaint is not enforced by imprisonment except after proof of means at the hearing of a judgment summons, and a warrant cannot be issued for arresting a party for failure to appear to answer such complaint.

Means to pay does not necessarily mean the receipt of money subsequent to the date of the Order. Occupancy of a house and employment are evidence of means.

Section 251, P.H. Act, 1875, enacts :—

"251. All offences under this Act, and all penalties, forfeitures, costs, and expenses, under this Act directed to be recovered in a summary manner, or the recovery of which is not otherwise provided for, may be prosecuted and recovered in manner directed by the Summary Jurisdiction Acts before a court of summary jurisdiction."



Where the application of penalties is not provided for by statute, the informer is entitled to half, and the District Council to the remainder, and if the Council are the informer they are entitled to the whole sum,<sup>1</sup> and penalties incurred under Acts incorporated with the P.H. Acts are applied in the same mode.<sup>2</sup> The institution of proceedings for the recovery of penalties is regulated by section 253, P.H. Act, 1875 :—

“253. Proceedings for the recovery of any penalty under this Act shall not, except as in this Act is expressly provided, be had or taken by any person other than by a party aggrieved, or by the local authority of the district in which the offence is committed, without the consent in writing of the Attorney-General. Provided that such consent shall not be required to proceedings which are by the provisions of this Act relating to nuisances or offensive trades authorised to be taken by a local authority in respect of any act or default committed or taking place without their district or in respect of any house, building, manufactory, or place situated without their district.”

A ratepayer is not, as such a party, aggrieved by an offence against the Act or the byclaws made under it. The grievance consists in actual injury to private rights. Penalties imposed by the L.G. Act, 1894, section 46, on councillors who act when disqualified are unappropriated and may be recovered by any person, but he gets no part of the fine.<sup>3</sup> Penalties incurred under the Acts incorporated with the P.H. Acts, 1875, are recovered in the same mode as under

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<sup>1</sup> Section 254, P.H. Act, 1875.

<sup>2</sup> Section 316, P.H. Act, 1875.

<sup>3</sup> R. v. Stewart, 1896, 1 Q.B. 300.

that Act :<sup>1</sup> however, it has been decided that the police are empowered to proceed by summons against offenders against the provisions of section 28 Towns Police Clauses Act, 1847.<sup>2</sup>

### *Complaints.*

Demand of sums below fifty pounds, which District Councils are empowered to recover in a Court of Summary Jurisdiction, may at the option of the Council be taken in a County Court, as if such demands were debts within the cognisance of such court.<sup>3</sup>

Complaints must be made within six calendar months from the time when the matter of complaint arose ;<sup>4</sup> and the rule applies where proceedings are taken in the County Court for demands for district rates or expenses incurred about private street works or private improvement works ; but not to costs and expenses of the execution of provisions of the P.H. Act relating to nuisances, which are recoverable pursuant to section 104 either summarily or in any county or superior court from the person who is owner for the time being.

District rates are recovered pursuant to section 256, P.H. Act, 1875 :—

“256. If any person assessed to any rate made under this Act by any urban authority fails to pay the same when due and

<sup>1</sup> Section 316.

<sup>2</sup> *Jobson v. Henderson*, 1900, 82 L.T. 260.

<sup>3</sup> Section 261, P.H. Act, 1875.

<sup>4</sup> *Tottenham L.B. v. Rowell*, 1876, 1 Ex.D. 514 : The six months runs from the time when the whole matter of complaint arises. If a number of fees are due, the time runs from the date of demand, *Corbett v. Badger*, 1901, 17 T.L.R. 475.

for the space of fourteen days after the same has been lawfully demanded in writing, or if any person quits or is about to quit any premises without payment of any such rate then due from him in respect of such premises, and refuses to pay the same after lawful demand thereof in writing, any justice may summon the defaulter to appear before a court of summary jurisdiction to show cause why the rate in arrear should not be paid; and if the defaulter fails to appear, or if no sufficient cause for non-payment is shown, the court may make an order for payment of the same, and in default of compliance with such order, may by warrant cause the same to be levied by distress of the goods and chattels of the defaulter.

“The costs of the levy of arrears of any rate may be included in the warrant for such levy.”

Where a rate is made contrary to the provisions of the Act which authorises its levy, there is sufficient cause for non-payment, *e.g.* where it is not made in accordance with the valuation list in force; but matters of excuse cannot be entertained by the Court, *e.g.* absence of benefit from the works in respect of which a rate is made.<sup>1</sup> If the facts of occupancy and due demand are proved, it lies on the ratepayer to contest liability by proving sufficient cause for non-payment.

If the Justices refuse to entertain an objection relating to legal liability, a ratepayer can question their order in a case stated for the determination of the High Court under section 33 of the Summary Jurisdiction Act, 1879.

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<sup>1</sup> *Dorling v. Epsom L.B.*, 1855, 5 Ex.B. 471.

### *Appeals.*

Appeals direct to the Court of Quarter Sessions by persons aggrieved by any rate or order made by a District Council are rare. The procedure follows the practice in the case of appeals from orders of the Justices, which are regulated by section 31 Summary Jurisdiction Act, 1879.

Section 269, Public Health Act, enacts :—

“269. Where any person deems himself aggrieved by any rate made under the provisions of this Act or by any order, conviction, judgment, or determination of or by any matter or thing done by any court of summary jurisdiction, such person may appeal therefrom, subject to the conditions and regulations following ;

“(1.) The appeal shall be made to the next court of quarter sessions.”

The P.H. Acts Amendment Act, 1890, provides for appeals against orders of the District Council made under that Act :—

(1.) Any person aggrieved—

“(a.) By any order, judgment, determination or requirement of a local authority under this Act ;

“(b.) By the withholding of any order, certificate, licence, consent, or approval, which may be made, granted, or given, by a local authority under this Act ;

“(c.) By any conviction or order of a court of summary jurisdiction under the provision of this Act ;  
may appeal in manner provided by the Summary Jurisdiction Acts to a court of Quarter Sessions.

“(2.) This section shall not apply in cases where there is an appeal to the Local Government Board under section 268 of the P.H. Act, 1875.”

Section 268, P.H. Act, 1875, gives an appeal by memorial to the Local Government Board within 21 days from any decision of a District Council in any case in which they are empowered to recover in summary manner any expenses incurred by them or to declare such expenses to be private improvement expenses.

At the hearing of appeals against a district rate the Court adjudicate as in appeals against poor rates, and where a rate is quashed or amended excess payments are taken on account of the next effective rate made for the like purpose as the rate appealed from.<sup>1</sup>

All appeals are brought according to the regulations directed by the Summary Jurisdiction Act, 1879, which provides by section 31, as follows :—

“(1.) The appeal shall be made to the prescribed court of general or quarter sessions, or, if no court is prescribed, to the next practicable court of general or quarter sessions having jurisdiction in the county, borough, or place for which the said court of summary jurisdiction acted, and holden not less than fifteen days after the day on which the decision was given upon which the conviction or order was founded ; and

“(2.) The appellant shall, within the prescribed time, or, if no time is prescribed, within seven days after the day on which the said decision of the court was given, give notice of appeal by serving on the other party and on the clerk of the said court of summary jurisdiction notice in writing of his intention to appeal, and of the general grounds of such appeal ; and

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<sup>1</sup> Section 269 (5).

- “(3.) The appellant shall, within the prescribed time, or, if no time is prescribed, within three days after the day on which he gave notice of appeal, enter into a recognizance before a court of summary jurisdiction, with or without a surety or sureties as the court may direct, conditioned to appear at the said sessions and to try such appeal, and to abide the judgment of the Court of Appeal thereon, and to pay such costs as may be awarded by the Court of Appeal, or the appellant may, if the court of summary jurisdiction before whom the appellant appears to enter into a recognizance think it expedient, instead of entering into a recognizance, give such other security by deposit of money with the clerk of the court of summary jurisdiction or otherwise as that court deem sufficient; and
- “(4.) Where the appellant is in custody, the court of summary jurisdiction before whom the appellant appears to enter into a recognizance may, if the court think fit, on the appellant entering into such recognizance, or giving such other security as aforesaid, release him from custody; and
- “(5.) The Court of Appeal may adjourn the hearing of the appeal, and upon the hearing thereof, may confirm, reverse, or modify the decision of the court of summary jurisdiction, or remit the matter, with the opinion of the Court of Appeal thereon, to a court of summary jurisdiction acting for the same county, borough, or place as the court by whom the conviction or order appealed against was made, or may make such other order in the matter as the Court of Appeal may think just, and may, by such order exercise any power which the court of summary jurisdiction might have exercised, and such order shall have the same effect, and may be enforced in the same manner, as if it had been made by the court of summary jurisdiction. The

Court of Appeal may also make such order as to costs to be paid by either party as the court may think just; and

“(6.) Whenever a decision is not confirmed by the Court of Appeal, the clerk of the peace shall send to the clerk of the court of summary jurisdiction from whose decision the appeal was made, for entry in his register, and also endorse on the conviction or order appealed against, a memorandum of the decision of the Court of Appeal, and whenever any copy or certificate of such conviction or order is made, a copy of such memorandum shall be added thereto, and shall be sufficient evidence of the said decision in every case where such copy or certificate would be sufficient evidence of such conviction or order; and

“(7.) Every notice in writing required by this section to be given by an appellant shall be in writing signed by him, or by his agent on his behalf, and may be transmitted as a registered letter by the post in the ordinary way, and shall be deemed to have been served at the time when it would be delivered in the ordinary course of the post.”

Where the estimate prefixed to a rate shows that it is made for purpose other than those sanctioned by the P.H. Acts, it is illegal and may be quashed on appeal to the Quarter Sessions.<sup>1</sup>

The collection of the rate is made by the Overseers of rural parishes in obedience to the precept of the Rural District Council.

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<sup>1</sup> Reg. v. Worksop, 1857, 21 J.P. 451.



## ACTIONS AGAINST PUBLIC AUTHORITIES.

*Negligence—Liability of Councillors—P.A. Protection Act, 1893—Taxation of Costs.*

Formerly an opinion prevailed that a public body, bound to discharge a public duty without reward, were not responsible for the negligence of those whom they employed. The invalidity of that is shown by the Mersey Docks case.<sup>1</sup> Moreover, their land is liable to be taken by the Sheriff under a writ of *elegit*,<sup>2</sup> and their goods and chattles under a writ of *fiери facias*.<sup>3</sup>

By Order 42 of the Supreme Court, Rule 31—

“Any judgment or order against a Corporation wilfully disobeyed, may by leave of the Court or a Judge, be enforced by sequestration against the corporate property or by attachment against the directors or other officers thereof, or by writ of sequestration against their property.”

An application under this rule may be by motion or summons. An instance is afforded in *Selous v. Croydon L.B.*<sup>4</sup>

The protection of District Councillors and their officers when they exercise statutory powers in good faith does not extend to the misapplication of money. Where a statutory body are authorised to receive money, and are directed to apply it in a particular way, the members are made personally responsible for its application, however *bonâ fide* their conduct may have been. This is the common case of a surcharge

<sup>1</sup> L.R., 1866, 1 H.L. 93.

<sup>2</sup> *Worral L.B. v. Lloyd*, 1866, L.R., 1 C.T. 718.

<sup>3</sup> *Coe v. Wise*, 1866, L.R., 1 Q.B. 711.

<sup>4</sup> 1885, 53 L.T. 209.



by the District Auditor, and the members who join in making the illegal orders or drawing the cheque for an unauthorised purpose are responsible for the costs of legal proceedings caused thereby.<sup>1</sup>

Section 265 of the Public Health Act, 1875, is as follows :—

“No matter or thing done, and no contract entered into by any Local Authority, and no matter or thing done by any member of any such Authority or by any officer of such Authority, or other person whomsoever acting under the direction of such Authority shall, if the matter or thing were done or the contract were entered into *bonâ fide* for the purpose of executing this Act, subject them or any of them personally to any action, liability, claim or demand whatsoever; and any expenses incurred by any such Authority, member, officer, or other person acting as last aforesaid shall be borne and repaid out of the fund or rate applicable by such Authority to the general purposes of this Act.”

This section is supplemented by section 26 (5), Local Government Act, 1894, which provides that any proceedings or steps taken by a District Council or County Council in relation to any alleged right of way shall not be deemed to be unauthorised by reason only of such right of way not being found to exist.

The Public Authorities Protection Act, 1893, purports to embrace actions against any person for any act done in pursuance or execution or intended execution of any Act of Parliament or of any public duty or authority. This wording is not clear enough to exclude bodies incorporated by Private Act for commercial purposes. The title of the Act, which is

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<sup>1</sup> Q. v. Vaile, 1889, 23 Q.B.D. 483.

read as a part of it, excludes railway companies. They are purely commercial, and the shareholders pocket all the profits; but the local importance of a time-honoured pier or harbour company with a Private Act has assumed the disinterested aspect of a Public Authority, yet their business is based on gains and profits which go into the pockets of the shareholders. Thus such a company are free from the statutory restrictions which forbid Local Authorities from making profits. The works of Local Authorities are done on an estimate of actual cost, and if they supply water the rate is made to meet actual expenditure; no profits can be made. This restriction stamps the public character of the Authority; their powers are conferred for the public benefit, and they can make no gains and profits subject to income tax.

A quite different position is that of the pier company at Margate, who alleged that their defaults of longer standing than six months could not, by reason of section 1 of the Public Authorities Protection Act, 1893, be called in question by action or other proceeding in a court of law.<sup>1</sup>

Only such causes of action are within this Act as involve some tortious neglect or default in the execution of statutory powers; breaches of contract are not within it. The cause of action accrues when a person sustains loss; it involves the breach of duty and the damage arising from it, *e.g.*, if negligent execution of sanitary works occasions a leakage and a nuisance.

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<sup>1</sup> See *M. of Margate v. Margate Pier Company*, 1900, 1 Ch. 718.

though the leakage may be of long continuance; the cause of action does not accrue until the nuisance becomes appreciable.<sup>1</sup>

A recent decision on taxation of costs of Local Authorities should be noted. Where a District Council employ a solicitor as clerk whose salary includes contentious work, and they obtain a judgment in an action brought against them, it carries costs to be taxed as between solicitor and client until it is ascertained that they receive more than enough to indemnify them in respect of the proportion of the salary paid to the solicitor in respect of the work done in the action.<sup>2</sup>

Section 1 of the Public Authorities Protection Act, 1893, means that where in an action a defendant District Council obtain a judgment, it carries costs as between solicitor and client, in cases in which defendants are entitled to costs. This does not take away the discretion of a Judge under O. 65. VI., Rules of the Supreme Court, to deprive a successful party of costs; hence a Judge who tries a case without a jury has an absolute discretion, and a discretion for good cause if the action is tried with a jury to deprive the successful jury of costs. And good cause embraces conduct of a party in the litigation and antecedent conduct of the party which led to it.<sup>3</sup>

And all the decisions harmonise therewith. In *Harrop v. M. of Osset*,<sup>4</sup> the first decision under this

<sup>1</sup> *D. of Devonshire v. St. Mary Islington*, Q.B.D., 25th Nov. 1895.

<sup>2</sup> *Henderson v. Merthyr Tydfil*, 1900, L.T. 394.

<sup>3</sup> *Bostock v. Ramsay* U.D.C., 1900, 1 Q.B. 357.

<sup>4</sup> 1898, 1 Ch. 525.

Act, the word "action" used in section 1 was declared to include all actions whether for an injunction, or actions partly for injunctions and partly for damages. Solicitor and client costs will be allowed on taxation where the order of the Court does not contain express direction to that effect.<sup>1</sup> The Act covers an action for a declaration of rights,<sup>2</sup> and a consent order made in chambers dismissing an action is a judgment within it.<sup>3</sup> And the Act being one relating to procedure is retro-operative.<sup>4</sup>

The Act does not apply to appeals or motions.<sup>5</sup>

Where County Councils enforce public rights in default of District Councils they are entitled to have costs of an action taxed as between solicitor and client.<sup>6</sup>

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<sup>1</sup> *N. Met. Trams. Co. v. Lond. C.C.*, 1898, 2 Ch. 145.

<sup>2</sup> *Grand Junction Wks. Co. v. Hampton D.C.*, 1898, 2 Ch. 331.

<sup>3</sup> *Shaw v. Hertford C.C.*, 1899, 2 Q.B. 282; 15 T.L.R. 462.

<sup>4</sup> *Bostock v. Ramsay U.D.C.*, 1900, 1 Q.B. 357.

<sup>5</sup> *Fielding v. Corp. of Morley*, 1899, 1 Ch. 1.

<sup>6</sup> *R. v. Norfolk C.C.*, 1901, 2 K.B. 268.



## CHAPTER 34.

## THE LOCAL GOVERNMENT BOARD.

*Inquiries and Appeals—Memorials—Defaults of District Councils—Complaints to the L. G. B.—To the County Council by Parish Councils.*

The Local Government Board Act, 1871 (34 & 35 Vict. c. 70), established the Local Government Board, and vested therein certain powers of the Home Secretary and Privy Council relating to the public health and local government, together with the powers and duties of the Poor Law Board. The Board consists of a President appointed by the Queen, to hold office during pleasure, and the Lord President of the Privy Council, all the Principal Secretaries of State, the Lord Privy Seal, the Chancellor of the Exchequer. The offices of President and Secretary of the Board are offices of profit within which, pursuant to the Representation of the People Act, 1867, do not disqualify those who hold them to be elected to a seat in Parliament. The powers transferred to the Board relate to the registration of births, deaths, and marriages, sanitary matters, baths and wash-houses, public

improvements, towns improvements, Housing of the Working Classes Acts, local taxation returns, prevention of diseases, and vaccination, and any Acts amending the Acts which conferred such powers on the Secretary of State or Privy Council.

District Councils are under the supervision and control of the Local Government Board in respect of the fulfilment of their public duties. The High Court has not a general power to enforce the performance of public duties by public bodies. An applicant to the Court for a mandamus must have a specific legal right to enforce the performance of some duty, in order to support his application. If the sufficiency of the exercise of statutory duty under the Public Health Acts is in question, the remedy to correct the default of the Local Authority is by complaint to the Local Government Board, pursuant to section 299, Public Health Act, 1875.<sup>1</sup>

By section 58, Local Government Act, 1894, the accounts of the Council, their committees and officers, are to be made in such form as the Local Government Board prescribe. The General Order for Accounts, 22nd March 1880, prescribes a form of financial statement to be prepared by the District Council, pursuant to section 3 of the District Auditors Act, 1879. Any Order of the Board may be made a rule of the High Court, enforceable against individuals, or by mandamus, to make a rate where an award is against a District Council.

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<sup>1</sup> See *Reg. v. Lewisham Guardians*, 1897, 1 Q.B. 498.

Sections 293, 295, Public Health Act, 1875, enact—

“293. The Local Government Board may from time to time cause to be made such inquiries as are directed by this Act, and such inquiries as they see fit in relation to any matters concerning the public health in any place, or any matters with respect to which their sanction approval or consent is required by this Act.

“295. All orders made by the Local Government Board in pursuance of this Act shall be binding and conclusive in respect of the matters to which they refer, and shall be published in such manner as that Board may direct.”

The finality of an Order of the Board applies only to matters within their power to determine and which are directly submitted to them. The financial statement has to be sent to the Local Government Board, and seems to be done instead of the annual report. The Local Government Board has not yet (A.D. 1901) prescribed a new form.

The Inspectors may attend at any meeting of the Council, but have not any right to take part in the business. They may convey any instructions of the Local Government Board, and advise if they are consulted. The Inspectors of the Board are employed to conduct local inquiries, and the Board can order by whom or out of what rate the costs of an inquiry or appeal shall be borne, section 294, Public Health Act, 1875.

An order is not conclusive on a question of fact, *e.g.*, where the Board make an order conferring urban powers on a Rural District Council in respect of the paving of a road ; it is not conclusive that the road is

a street within the meaning of the Public Health Act. An illegal order of the Board may be brought up to the High Court by writ of certiorari, so that it may be quashed; or where a District Council proceed to enforce an order which the Board have made without jurisdiction, they may be restrained by an injunction granted at the instance of a party interested.<sup>2</sup>

Appeals lie to the Local Government Board against the decision of a Local Authority in any case in which they are empowered to recover in summary manner any expenses incurred by them, or to declare such expenses to be private improvement expenses. Section 268, Public Health Act, 1875, provides—

“Where any person deems himself aggrieved by the decision of the Local Authority in any case in which the Local Authority are empowered to recover in a summary manner any expenses incurred by them, or to declare such expenses to be private improvement expenses, he may, within twenty-one days after notice of such decision, address a memorial to the Local Government Board, stating the grounds of his complaint, and shall deliver a copy thereof to the Local Authority; the Local Government Board may make such order in the matter as to the said Board may seem equitable, and the order so made shall be binding and conclusive on all parties.

“Any proceedings that may have been commenced for the recovery of such expenses by the Local Authority shall, on the delivery to them of such copy as aforesaid, be stayed; and the Local Government Board may, if it think fit, by its order, direct the Local Authority to pay to the person so proceeded against such sum as the said Board may consider to be a just compensation for the loss, damage, or grievance thereby sustained by him.”

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<sup>1</sup> *Fenwick v. Croydon R.S.A.*, 1891, 2 Q.B. 216.

<sup>2</sup> *A.G. v. Hanwell U.D.C.*, 1899, 48 W.R. 69.



The demand of the expenses apportioned on an owner is the *decision* of the Council from which the 21 days run, and within which the memorial to the Board must be presented.<sup>1</sup> The *order* of the Board duly made under the statutory power conferred is as effectual as if the statute enacted what the order directs. The statute delegates to the Board the power to say what shall or shall not be done. On the consideration of the memorial the Board can inquire into all circumstances which can affect the proportion of the expenses assessed on the Appellant, and also whether the whole expenditure is excessive. The Board can make inquiry as they think fit. They are not bound to hear the parties orally, but they must let the Appellant know what is the answer of the District Council, so as to give him an opportunity of giving his grounds against its validity. The decision of the Board is final, both in regard to the amount of the apportionment and any claim for interest thereon, and any interest beyond the sum awarded by the Board runs from the date of their order and not from the date of the first demand made by the District Council.<sup>2</sup> On appeals the Board regulate only the mode and time of collecting the apportionments. They cannot determine legal liability. They correct the order of the District Council, which the Justices cannot do. In summary proceedings the Justices determine if any legal liability lies on the owner and if so the whole sum apportioned must be paid.

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<sup>1</sup> Reg. v. L.G. Board, 1882, 10 Q.B.D. 309.

<sup>2</sup> Wallington v. Wilkes, 1864, 10 L.T. 784.

Appeals to the Board are given by various statutes relating to local government. The overseers of parishes in a Rural District can appeal to the Board against the apportionment of expenses by a Rural District Council.

The procedure in appeals against disallowances and surcharges of a District Auditor are pointed out under the heading of audit.<sup>1</sup>

Any person may make a "complaint" to the Local Government Board of the default of a District Council to sufficiently enforce any provision of the Public Health Acts. The "complaint" must be written on folio foolscap paper, addressed to the President, and sent through the Secretary of the Board. The facts of the case should be concisely stated in due order, and so as to establish the default of the Council in relation to some duty imposed on them by Statute. The Local Government Board communicate the "complaint" to the District Council, and, on the facts stated, exercise their discretion about holding an inquiry by one of their Inspectors. This procedure by complaint is only applicable where a power conferred on the Council is insufficiently exercised; where a nuisance and damage are caused by negligent control the remedy is by action for damages.<sup>2</sup>

Section 229, Public Health Act, 1875, is as follows:—

"299. Where complaint is made to the Local Government Board that a Local Authority has made default in providing their district with sufficient sewers, or in the maintenance of

<sup>1</sup> *Ante*, p. 83.

<sup>2</sup> *Baron v. Portlade U.D.C.*, 1900, 2 Q.B. 589.

existing sewers, or in providing their district with a supply of water, in cases where danger arises to the health of the inhabitants from the insufficiency or unwholesomeness of the existing supply of water, and a proper supply can be got at a reasonable cost, or that a Local Authority has made default in enforcing any provisions of this Act which it is their duty to enforce, the Local Government Board if satisfied, after due inquiry, that the Authority has been guilty of the alleged default, shall make an order limiting a time for the performance of their duty in the matter of such complaint. If such duty is not performed by the time limited in the order, such order may be enforced by writ of mandamus, or the Local Government Board may appoint some person to perform such duty, and shall by order direct that the expense of performing the same, together with a reasonable remuneration to the person appointed for superintending such performance, and amounting to a sum specified in the order, together with the costs of the proceedings, shall be paid by the Authority in default; and any order made for the payment of such expenses and costs may be removed into the Court of Queen's Bench, and be enforced in the same manner as if the same were an order of such Court.

"Any person appointed under this section to perform the duty of a defaulting Local Authority shall, in the performance and for the purposes of such duty, be invested with all the powers of such Authority other than (save as herein-after provided) the powers of levying rates; and the Local Government Board may from time to time by order change any person so appointed."

District Councils, being placed under the supervision of the Local Government Board, statutory remedy by complaint must be followed. A writ of mandamus is not granted by the High Court where another efficacious remedy is available.<sup>1</sup>

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<sup>1</sup> *Reg. v. Lewisham*, 1897, 66 L.J., Q.B. 403; *Peebles v. Osbaldtwistle U.D.C.*, 1897, 1 Q.B. 625; *Pasmore v. Osbaldtwistle*, 1898, A.C. 387.

Local difficulties, involving heavy expenditure, do not excuse non-execution of a statutory duty. The Local Government Board inquire about the alleged default in the mode they deem best, and their order must be obeyed. The High Court cannot interfere with order of the Board unless they have manifestly exceeded the powers conferred on them by the Public Health Acts. If the order of the Board is made without jurisdiction, a writ of certiorari will be issued to remove the order into the High Court for the purpose of discharging it.<sup>1</sup>

If a question of law is involved in a matter within the jurisdiction of the Board they must decide it. The Act leaves it to them, and their powers cannot be limited by the High Court.<sup>2</sup>

The order of the Local Government Board deals with defaults under the Public Health Act, 1875. An amendment of general sanitary law of wider application is enacted by section 7 of the Housing of the Working Classes Act, 1885, 48 & 49 Viet. c. 72.

"7. It shall be the duty of every Local Authority entrusted with the execution of laws relating to public health and local government to put in force from time to time, as occasion may arise, the powers with which they are invested, so as to secure the proper sanitary condition of all premises within the area under the control of such authority."

Where the District Council have a discretion about enforcing their powers as to the sanitary condition of premises, the Act of 1885 makes obligatory the exercise of such powers, *e.g.*, under section 23, Public

<sup>1</sup> Reg. v. Staines, 1891, 69 L.T. 77.

<sup>2</sup> Robinson v. M. of Workington, 1897, 1 Q.B. 619.

Health Act, 1875, where the owner fails to comply with a notice from the Council, they must execute the necessary works themselves.

Where the Local Government Board appoint some person to execute the works in respect to which the District Council are in default, the Board is to be recouped by the District Council for all expenses incurred and loans contracted for fulfilment of their order. On the failure of the District Council to pay, the Board can empower the levy of a sufficient sum out of the General District Rate.

### *Complaints by Parish Councils.*

The Local Government Act, 1894, section 16, empowers a Parish Council to lodge a complaint with the County Council of the default of a Rural District Council, and, in such case, invests the County Council with the powers of the Local Government Board. Section 16 is as follows:—

“Section 16. Where a Parish Council resolve that a Rural District Council ought to have provided the parish with sufficient sewers, or to have maintained existing sewers, or to have provided the parish with a supply of water in cases where danger arises to the health of the inhabitants from the insufficiency or unwholesomeness of the existing supply of water, and a proper supply can be got at a reasonable cost, or to have enforced with regard to the parish any provisions of the Public Health Acts which it is their duty to enforce and have failed so to do, or that they have failed to maintain and repair any highway in a good and substantial manner, the Parish Council may complain to the County Council, and the County Council, if satisfied after due inquiry that the District Council have so failed as respects the subject matter of the

complaint, may resolve that the duties and powers of the District Council, for the purpose of the matter complained of shall be transferred to the County Council, and they shall be transferred accordingly.

“(2.) Upon any complaint under this section the County Council may, instead of resolving that the duties and powers of the Rural District Council be transferred to them, make such an order as is mentioned in section two hundred and ninety-nine of the Public Health Act, 1875, and may appoint a person to perform the duty mentioned in the order, and upon such appointment sections two hundred and ninety-nine to three hundred and two of the Public Health Act, 1875, shall apply with the substitution of the County Council for the Local Government Board.

“(3.) Where a Rural District Council have determined to adopt plans for the sewerage or water supply of any contributory place within the district, they shall give notice thereof to the Parish Council of any parish for which the works are to be provided before any contract is entered into by them for the execution of the works.”

In small parishes the parish meeting are invested with the like power of complaint (L.G.A., 1894, section 19 (8). Complaints under the Act of 1875 are available in rural districts.

Procedure by complaint to the County Council is also available, where a highway is obstructed or the roadside waste is encroached upon. Section 26 (4), Local Government Act, 1894, is as follows:—

“Where a Parish Council have represented to the District Council that any public right of way within the district or an adjoining district in the county or counties in which the district is situate has been unlawfully stopped or obstructed, or that an unlawful encroachment has taken place on any roadside waste within the district, it shall be the duty of the District Council, unless satisfied that the allegations of such representation are incorrect, to take proper proceedings

accordingly ; and if the District Council refuse or fail to take any proceedings in consequence of such representation, the Parish Council may petition the County Council for the county within which the way or waste is situate, and if that Council so resolve the powers and duties of the District Council under this section shall be transferred to the County Council."

County Councils are also invested by section 10, Highways and Locomotives Act, 1878, with authority to enforce the performance of duty by any Highway Authority within their jurisdiction in maintaining and repairing a highway. Failure of a District Council to comply with an order of the County Council may be rectified by the appointment of some person to perform the required duty. If liability to repair the highway in respect of which an order has been made is contested, the County Council may prefer an indictment at the next Assizes holden for the county, for the purpose of trying the liability of the District Council to repair the highway. This Act applies to both Urban and Rural Districts.

Where a County Council acquire the powers of a Rural District Council, the expenses incurred about the execution of any works are a debt to County Council, and the District Council defray them as part of the expenses of their district. For the purposes of transferred powers the County Council may borrow subject to the like conditions, in the like manner and on the security of the like fund or rate as the District Council in like case might have borrowed.<sup>1</sup>

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<sup>1</sup> L.G. Act, 1894, sec. 63 (1) c.



Such a loan contracted to defray special expenses in Rural Districts will be charged on the rate of the whole district or parish so far as they cannot be raised from the occupiers or owners of the part of the district or parish for benefit of which such expenses were incurred.<sup>1</sup>

The Local Government Board's powers under sections 300, 301, 302, Public Health Act, 1878, are similar, but with a power to appoint an officer to levy a rate where the defaulting District Council fail to refund the expenses incurred by the Board.



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<sup>1</sup> *Horn v. Sleaford R.D.C.*, 1898, 2 Q.B. 358.



## CHAPTER 35.

## PROVISIONAL ORDERS.

*Procedure—Costs—Borough Funds Act, 1872—  
Local Acts—Conferences.*

Provisional Orders of the Local Government Board are those which do not come into force until an Act of Parliament confirming them is passed. Costs of obtaining such orders or incurred about promoting or opposing their confirmation by Parliament and of any inquiry made by the Board may be charged on the district rates, and if thought expedient by the L.G. Board the District Council may contract a loan for the purpose of defraying such costs.<sup>1</sup>

A Provisional Order must follow the Act which authorised it, applying it as directed and not partially ;<sup>2</sup> if an unauthorised order is issued the District Council may be restrained by injunction from putting it into force.<sup>3</sup> Section 297 P.H. Act, 1875, enacts as follows :—

“297. With respect to provisional orders authorised to be made by the Local Government Board under this Act, the following enactments shall be made :—

(1.) The Local Government Board shall not make any provisional order under this Act unless public

<sup>1</sup> Section 298, P.H. Act, 1878.

<sup>2</sup> *A.G. v. Hanwell U.D.P.*, 1899, 48 W.R. 69.

<sup>3</sup> *N.E. Ry. v. Telgimouth*, 1868, L.R. 3 Q.B. 723.

notice of the purport of the proposed order has been previously given by advertisement in two successive weeks in some local newspaper circulating in the district to which such provisional order relates :

- “(2.) Before making any such provisional order, the Local Government Board shall consider any objections which may be made thereto by any persons affected thereby, and in cases where the subject matter is one to which a local inquiry is applicable, shall cause to be made a local inquiry, of which public notice shall be given in manner aforesaid, and at which all persons interested shall be permitted to attend and make objections :
- “(3.) The Local Government Board may submit to Parliament for confirmation any provisional order made by it in pursuance of this Act, but any such order shall be of no force whatever unless and until it is confirmed by Parliament :
- “(4.) If while the Bill confirming any such order is pending in either House of Parliament, a petition is presented against any order comprised therein, the Bill, so far as it relates to such order, may be referred to a Select Committee, and the petitioner shall be allowed to appear and oppose as in the case of private bills :
- “(5.) Any Act confirming any provisional order made in pursuance of any of the Sanitary Acts or of this Act, and any order in council made in pursuance of any of the Sanitary Acts, may be repealed altered or amended by any provisional order made by the Local Government Board and confirmed by Parliament :
- “(6.) The Local Government Board may revoke, either wholly or partially, any provisional order made by them before the same is confirmed by Parliament, but such revocation shall not be made whilst the

Bill confirming the order is pending in either House of Parliament :

“(7.) The making of a provisional order shall be *primâ facie* evidence that all the requirements of this Act in respect of proceedings required to be taken previously to the making of such provisional order have been complied with :

“(8.) Every Act confirming any such provisional order shall be deemed to be a public general Act.”

Local inquiries are applicable in any case where the public health is concerned, or to any matters for which the approval of the L.G. Board is required.<sup>1</sup> Inquiries are expressly directed in cases where objection is raised to the construction of sewage works outside a district (section 34) ; or to the construction of large reservoirs for water (section 53) ; the purchase of land compulsorily (section 176) ; the borrowing of money (section 234) ; the formation and alteration of districts (sections 277-278) ; and the division of a district into wards.

The Borough Funds Act, 1872, does not extend to applications for Provisional Orders. Section 4 of that Act provides that costs of promoting or opposing Bills in Parliament shall not be incurred unless in pursuance of a resolution of a majority of the whole number of the Council, passed at a meeting specially called for the purpose ; and no such expense shall be charged on the rates unless the promotion or opposition has been authorised by the consent of the owners and ratepayers of the urban district expressed by a

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<sup>1</sup> Section 293.

resolution passed in manner prescribed by Schedule 3 to the P.H. Act, 1875.

By the House of Commons Costs Taxation Act, 1879, 42 & 43 Vict. c. 17, all the powers and provisions of the House of Commons Costs Taxation Act, 1847, 10 & 11 Vict. c. 69, are extended and applied to the costs, charges, and expenses of any parliamentary agent, solicitor, or other person in respect to the obtaining or promotion of or opposition to any provisional order or provisional certificate or any Bill for confirming the same; and in respect to the promotion of any Bill by any public trustees or commissioners, or by any municipal or other public authority, and in respect to the opposition to any public and general Bill; and by the Parliamentary Costs Act, 1871, any Select Committee of either House of Parliament to which any Bill for confirming or giving effect to provisional orders has been referred in relation to any provisional order therein contained may award costs, in like manner and under the same conditions under which costs may be awarded by any Select Committee under the Act of 28 & 29 Vict. c. 27.

Provisional orders are not, like judicial orders, removable into the High Court, by *certiorari* to have them quashed. The inquiry by the L.G. Board is substituted for and supersedes the preliminary proceedings to the passing of a private Bill, and if the Board overstep their authority the Select Committee

to which, upon petition, the Bill confirming it is referred will throw it out.<sup>1</sup>

### *The Local Act.*

The powers conferred by the Public Health Act, 1875, are cumulative. Hence, where there is a Local Act in force conferring powers similar to those conferred by the general Act, the District Council can enforce which Act they think fit. A general Act does not repeal a special Act, unless it is thereby shown that the attention of the Legislature has been directed to the special Act, and that the provisions of the general Act are intended to embrace the special cases within the special Act<sup>2</sup>; thus section 149, Public Health Act, 1875, which imposes a general obligation on a District Council to repair all highways within their district which are repairable by the inhabitants at large, does not repeal a local Act which confers on the Council power to order that any highway whether repairable by the public or not should be repaired and made good at the charge of the frontagers.<sup>3</sup>

So where a local Act confers a power conditional upon giving notice, and the general Act confers the same power without any notification, either power may be exercised at the option of the District Council. The notification contemplated by the statute is not a

<sup>1</sup> *Q. v. Hastings*, 1865, 6 B. & S. 401.

<sup>2</sup> *Garnett v. Bradley*, 1878, 3 A.C. 941.

<sup>3</sup> *Ashton-under-Lyne v. Pugh*, 1898, 1 Q.B. 45; and see *London and Blackwall Ry. v. Limehouse*, 1856, 3 K. & J. 123.

right of persons to receive notice, but a restriction on the exercise of the power making it inapplicable where no notice is given.<sup>1</sup>

Any limit imposed on any rate by any local Act does not apply to rates levied under the Public Health Act,<sup>2</sup> and limits imposed on the borough rate do not apply to the general district rate.<sup>3</sup>

By section 59 (6), Local Government Act, 1888, the Local Government Board, or a County Council, are empowered by scheme or order made by them under the Act to amend any local and personal Act where such scheme or order is required to be laid before Parliament. For this purpose an enactment with a local operation which was contained in a public general Act, was deemed to be a local and personal Act.<sup>4</sup> Saving clauses in the Public Health Act, 1875, and the Local Government Act, 1888, keep alive the provisions of local Acts, hence liabilities to contribute to repair of highways and bridges which are situate in another county or district will continue when imposed by a local Act.<sup>5</sup> Exemptions from the general district rate may be abolished by provisional order of the L.G. Board, section 211 (1), P.H. Act, 1875.

Section 303, Public Health Act, 1875, empowers the Local Government Board, on the application of

<sup>1</sup> *E. of Derby v. Bury Impt. Commrs.*, 1869, L.R., 4 Ex. 222.

<sup>2</sup> Section 227, P.H.A., 1875; *Bingley U.D.C. v. Midland Ry.*, 1899, 80 L.T. 723.

<sup>3</sup> *St. Helen's Corp. v. St. H. Colliery*, 1883, 48 J.P. 39.

<sup>4</sup> *Reg. v. L.C.C.*, 1893, 2 Q.B. 454.

<sup>5</sup> *R. Stafford v. Derby C.C.*, 1890, 51 J.P. 566.

any District Council, by Provisional Order, wholly or partially to repeal, alter, or amend any local Act, other than an Act for the conservancy of rivers, which is in force in any area comprising the district or part of any district, and not conferring powers or privileges on any persons for their own pecuniary benefit, which relates to the same subject matter as the Public Health Acts. Applications to the Local Government Board relating to local Acts should follow the official instructions, which are as follows :—

“ INSTRUCTIONS as to APPLICATIONS to the LOCAL GOVERNMENT BOARD for PROVISIONAL ORDERS under sections 297 and 303 of the Public Health Act, 1875. 29th August 1898.

*“ Repeal, alteration, or amendment of Local Acts or Confirming Acts.*

“1. The application should be made by a resolution of the Local Authority, asking the Board in general terms to repeal, alter, or amend the Act, wholly or partially, as the case may require, and a copy of the resolution, certified by the clerk, should be forwarded to the Board.

“2. The application must be received by the Board not later than the 30th November next, is very desirable that it should be sent in before the 15th October next.

“3. The application should be accompanied by a Queen's Printers' copy of the Act, and by a statement showing the particular provisions which it is proposed should be repealed, altered, or amended, the precise alteration desired, and any provisions which will require consequential alteration ; and in the event of the local Act having been previously altered by Provisional Order or local Act, a reference to such Order or Act should be given. The statement should also show clearly the grounds upon which each of the proposed amendments is desired.

"4. In any case in which powers are sought which deviate from, are in extension of, or are repugnant to the general law, the statement should show the circumstances peculiar to the locality which are alleged to justify the grant of the powers, and should contain a reference to any recent precedents for the grant of such powers.

"5. If the powers sought can be obtained by the adoption of a general Act or part of a general Act, the reasons for not adopting the provisions of the general law should be fully set out in the statement.

"6. If additional borrowing powers are sought it is desirable that the precise purposes for which the powers are required should be stated, and that estimates should be furnished, showing as far as practicable the amounts required for each purpose. References should also be given to the provisions of the Acts under which the Local Authority claim to have power to carry out the purposes for which the borrowing powers are sought.

"7. If power is sought for the acquisition or use of any land for the manufacture or storage of gas a concise description of such land should be furnished, together with a map, on a scale of not less than 25 inches to the mile, showing clearly the position of the land, and a statement of the number of houses situate within 300 yards of such land.

"8. If in any case the application is to confer the power to acquire or relates to an area which is described by reference to a map or plan, the map or plan must be on a scale of not less than 6 inches to the mile, and must accompany the application, and in all cases in which shares, &c. are deposited, Standing Order 39 of each House of Parliament must be complied with.

"9. In the case of any proposal to acquire land, Standing Order 38 must also be complied with, and an affidavit (sworn before a Justice of the Peace or a Commissioner for Oaths, and stamped with a half-crown impressed stamp) for production to the Examiner of Standing Orders, in proof that the requirements of those Standing Orders have been complied



with, or, as the case may be, that Standing Order 38 does not apply, must be supplied.

“N.B.—It is particularly requested that all applications and statements may be on foolscap paper of the usual size.”

### *Local Government Conferences.*

The Public Health and Local Government Conferences Act, 1885, 48 & 49 Viet. c. 22, enables the Local Government Board to authorise District Councils to pay the reasonable expenses of any councillor or councillors or clerk to the Council attending any conference or meeting of councillors of District Councils held for the purpose of discussing any matter which is connected with the duties which devolve upon them, and any reasonable expenses incurred in purchasing reports of the proceedings of any such meeting or conference. Pursuant to this Act the Board issued Orders relating to Urban and Rural Councils, the former is dated 13 May 1891, the latter 28 December 1896.

At such conferences as are not general conferences of all Urban or Rural Councils and which are held at a place within 100 miles of a district, the expenses of two councillors and the clerk may be paid: at a central and general conference the expenses of two councillors and the clerk may be paid where the place of conference is within 50 miles of a district; if beyond that distance the expenses of only one councillor may be paid.

The councillors authorised to represent the Council are nominated at a meeting held after four days'

notice of the business to be considered has been sent to each counsellor.

The Board suggest, that in addition to travelling expenses, the sum allowed for expenses should not exceed for each person, seven shillings and sixpence a day when not absent from home at night, and fifteen shillings a day when attendance at a conference involves absence from home at night. About the purchase of Reports of Proceedings of Conferences the Council exercise their discretion.



## APPENDIX.

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### RULES as to RESOLUTIONS of OWNERS and RATEPAYERS.

Rule 1.—For the purpose of passing a resolution of owners and ratepayers under this Act a meeting shall be summoned on the requisition of any twenty ratepayers or owners, or of any twenty ratepayers and owners resident in the district with respect to which the resolution is to be passed.

Rule 2.—The summoning officer of such meeting shall be the Chairman of the District Council.

Rule 3.—Ratepayers and owners making a requisition for the summoning of such meeting shall, if required, give security in a bond, with two sufficient sureties, for repayment to the summoning officer, in the event of the resolution not being passed, of the costs incurred in relation to such meeting or any poll taken in pursuance of any demand made thereat; the amount of the security to be given by such sureties and their sufficiency, and the amount of such costs, to be settled by agreement between the summoning officer and such ratepayers or owners, or, in case of dispute, by a court of summary jurisdiction.

Rule 4.—The summoning officer shall, on such requisition as aforesaid, fix a time and place for holding such meeting, and shall forthwith give notice thereof—

By advertisement in some one or more of the local newspapers circulated in the district;

By causing such notice to be affixed to the principal doors of every church and chapel in the place in which notices are usually affixed.

Rule 5.—The summoning officer shall be the chairman of the meeting unless he is unable or unwilling to preside, in which case the meeting on assembling shall choose one of its number as chairman, who may with the consent of a majority of the persons present adjourn the same from time to time.

Rule 6.—The chairman shall propose to the meeting the resolution, and the meeting shall decide for or against its adoption : Provided that if any owner or ratepayer demands that such question be decided by a poll of owners and ratepayers, such poll shall be taken by voting papers in the form hereto annexed in the same way and with the same incidents and conditions as to the qualification of electors and scale of voting, as to the notice to be given by the returning officer, delivery, filling up, and collection of voting papers, as to the counting of votes, as to the penalties for neglect or refusal to comply with the provisions of the Act, and in all respects whatsoever as is provided by the rules for the election of District Councils ; except that in districts where there is no register of owners and proxies under this Act, any owner or proxy shall be entitled to have a voting paper delivered to him of at least fourteen days before the last day appointed for delivery of the voting papers, he sends a claim in writing to the summoning officer containing the particulars required to be contained in claims to be entered on the register of owners and proxies.

For the purposes of such poll the summoning officer shall be returning officer and shall have the powers and perform the duties of a returning officer so far as the same are applicable to such poll.

If no poll is demanded, or the demand for a poll is withdrawn by the persons making the same, a declaration by the chairman shall, in the absence of proof to the contrary, be sufficient evidence of the decision of such meeting.

Rule 7.—A copy, under the hand of the summoning officer, of every resolution so passed shall be forwarded by him to the Local Government Board ; and it shall be his duty to

publish a copy thereof by advertisement for three successive weeks in some one or more of the local newspapers circulated in the district and by causing a copy thereof to be affixed to the principal doors of every church and chapel in the place to which notices are usually affixed.

Rule 8.—Where a resolution is passed by owners or rate-payers in any urban district the costs shall be paid out of the fund or rate applicable by the District Council to the general purposes of this Act.

*This procedure may be followed in regard to the establishment of a market and the promotion and opposition to bills in Parliament.*

The demand of a poll must be made by an owner or rate-payer as such and not as an agent for the interests of persons engaged in a commercial enterprise or supporting some rival company or bill in Parliament.





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